

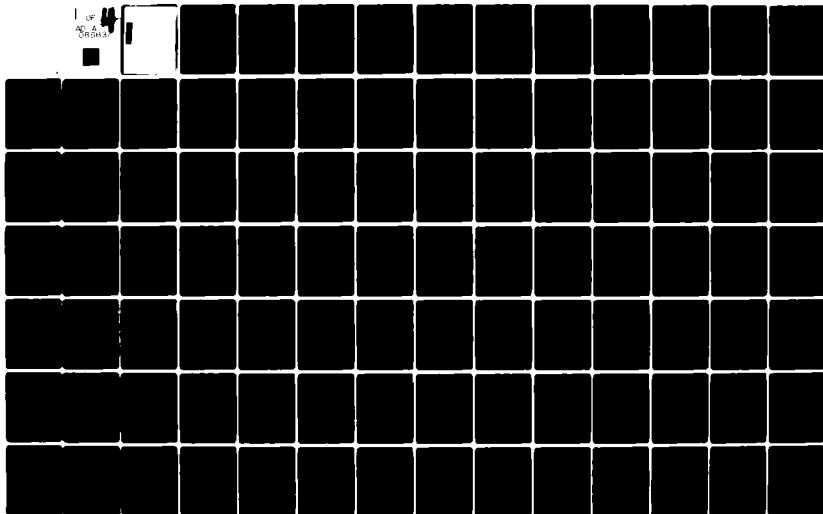
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ECUADOREAN-PERUVIAN RIVALRY IN THE UPPER AMAZON, (U)
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ECUADOREAN-PERUVIAN RIVALRY IN THE UPPER AMAZON. /

by

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William L. / Krieg

⑪ 1978

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CONTENTS

FORWARD

ABSTRACT

| | | |
|------|---|----|
| | | i |
| I. | <u>Origins of the Controversy</u> | 1 |
| | Early Times | 1 |
| | The Cedula of 1802 | 3 |
| | Execution of the Cedula of 1802 | 9 |
| | Independence | 11 |
| | War Between Colombia and Peru | 12 |
| | The Treaty of Guayaquil | 16 |
| | The Pedemonte-Mosquera Protocol | 18 |
| | Reviewing the Claims | 20 |
| II. | <u>Bilateral Attempts at Settlement</u> | 26 |
| | The Pando-Noboa Treaty of 1832 | 26 |
| | The Dispute Warms Up | 28 |
| | Peru Resorts to Force | 29 |
| | The García-Herrera Treaty - 1890 | 31 |
| III. | <u>Arbitration and Mediation</u> | 37 |
| | The Spanish Arbitration | 37 |
| | On the Brink of War | 43 |
| | Tripartite Mediation | 45 |
| | The Situation in 1911 - Summary | 50 |
| IV. | <u>The Mixed Formula</u> | 55 |
| | Shadow Boxing 1913 - 1920 | 55 |
| | The Ponce-Castro Oyanguren Protocol | 57 |
| | Ecuador-Colombia Boundary Fixed | 59 |
| | The Salomón-Lozano Treaty | 60 |
| | The Leticia Incident | 62 |
| | The Washington Talks | 66 |
| | Further Attempts at Mediation | 74 |

| | | | | | |
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|-------|---|-----|
| V. | <u>Resort to Force</u> | 77 |
| | The Military Build-up | 77 |
| | Personalities: Julio Tobar Donoso and Manuel Prado Ugarteche | 80 |
| | The Sharpening Crisis | 83 |
| | Tripartite "Friendly Services" | 87 |
| | The Shooting Begins | 89 |
| | Implementation of the Cease-fire | 94 |
| VI. | <u>Making the Peace</u> | 96 |
| | Stalemate | 96 |
| | The Talara Truce | 101 |
| | The Rio Conference and the Rio Protocol | 106 |
| VII. | <u>The Protocol in Force</u> | 116 |
| | The Terms | 116 |
| | Ecuadorean Reaction to the Protocol | 118 |
| | Boundary Demarcation Procedures | 124 |
| | The Western Sector Demarcated | 126 |
| | Unquiet on the Eastern Front | 128 |
| | The U.S. Air Force Drops a Bomb | 132 |
| | Efforts to Continue Boundary Delimitation | 134 |
| VIII. | <u>International Projection of the Ecuador-Peru Dispute</u> | 138 |
| | The Guarantors Summoned | 138 |
| | The Guarantors Begin to Act - Slowly | 139 |
| | How the Guarantors Worked | 142 |
| | 1953-1954: Crises Back-to-Back | 147 |
| | Proposal to Improve the Guarantors' Operations | 154 |
| | Ecuador Invokes the Inter-American Treaty of Reciprocal Assistance | 156 |
| | Efforts Towards a Definitive Settlement | 161 |
| | Washington Presents Package Settlement Proposal | 166 |
| | Brazil Picks up the Ball | 171 |
| | The 11th Inter-American Conference and the Boundary Dispute | 174 |
| | The Ecuadorean Elections of 1960 | 179 |

| | | |
|-------------|---|--------------|
| IX. | <u>Nullification and the Guarantors</u> | 182 |
| | The Velasco Administration, Peru and the Protocol | 182 |
| | The Guarantors' Declaration and its Sequel | 190 |
| X. | <u>The Dispute Since 1960</u> | 195 |
| | The Boundary, the Inter-American Conference and Cuba | 195 |
| | Ecuador Proposes "Pacific Settlement" Procedures | 198 |
| | Ecuador and the OAS | 201 |
| | A Change in the Climate | 208 |
| | Fisheries and Détente | 214 |
| | Oil on Troubled Waters | 216 |
| | The Carter Initiative | 219 |
| | The House of Cards Falls | 225 |
| XI. | <u>Ecuador as an Amazonian State</u> | 229 |
| | Communications with the <u>Oriente</u> | 229 |
| | Ecuador's Rights as a Riverine State | 237 |
| | Resources and Development | 245 |
| XII. | <u>The Dispute in Perspective</u> | 253 |
| | Justice or Equity? | 253 |
| | Proposals for Settlement | 257 |
| | The Role of the United States | 260 |
| <u>MAPS</u> | <u>Proposed Ecuador-Peru Boundaries</u> | after p. 36 |
| | The Pedemonte-Mosquera Protocol | 1830 |
| | The García-Herrera Treaty | 1890 |
| | The Menéndez Pidal Line | 1908 |
| | and | |
| | The Spanish Council of State Line | 1909 |
| | The Status Quo Line | 1936 |
| | and | |
| | The Rio Protocol Line | 1942 |
| | <u>The Lagartococha Zone</u> | after p. 129 |
| | <u>The Santiago-Zamora Zone</u> | after p. 133 |

APPENDIX I

The Rio Protocol (Spanish and English)

APPENDIX II

The Protocol of Friendship and Cooperation
Between Colombia and Peru (in part)
and its Additional Act

SOURCES

FOREWORD

The objective of this study is to provide the background required for an understanding of the boundary dispute between Ecuador and Peru, a hardy perennial among inter-American controversies. It is not designed to propound any particular thesis, much less to take sides in the dispute. Evaluations of the significance of the positions adopted by the parties over the years have been included, and it is anticipated that both Ecuadoreans and Peruvians will disagree with certain of the opinions expressed. The author can only assure readers that there is no intention to offend national sensibilities. It must be stressed that the views are entirely those of the author and do not reflect, except coincidentally, the policies of the U.S. Government or the Department of State.

Primary attention has been focused on the period after the entry into effect of the Rio Protocol of 1942 which attempted to fix the boundary between the rival states and which was guaranteed by Argentina, Brazil, Chile and the United States. Very little has previously been published on the efforts of the guarantors to work out the problems which arose in the execution of the protocol. These problems proved so intractable that the demarcation of the boundary has not yet been completed, leaving the guarantors with a residual responsibility which they may yet be called upon to discharge.

In addition to the survey of the post-1942 period, it was considered desirable to include information regarding the origins of the dispute and earlier attempts at solutions. Much of this material will be appearing for the first time in English.

The author is deeply indebted to many persons whose assistance has been invaluable in preparing the manuscript. Former Ambassador Maurice M. Bernbaum, Dr. Bryce Wood and Dr. William Lofstrom read the first draft and made extremely helpful suggestions on matters of substance. In addition, Dr. Wood kindly loaned his autographed copy of the most recent edition of Dr. Jorge Pérez Concha's Ensayo histórico-crítico de las relaciones diplomáticas del Ecuador con los Estados limítrofes, which was otherwise unavailable in Washington. Mrs. Madeline Naumann and my wife also reviewed the draft and aided immensely in improving the style and in the correction of typographical errors.

A special word of recognition is due Ms. Sandra H. Shaw and Mr. William Hezlep who prepared the excellent maps which accompany and illustrate the text. To the best of my knowledge, the map of the Santiago-Zamora zone showing the location of the boundary markers already emplaced and the location of the undemarcated area has not been previously published in this country.

The staff of the Library and of the Retrieval Branch of the Foreign Affairs Document and Reference Center of the Department of State have been unusually kind, patient and helpful in unearthing obscure references which have made it possible to collect the data which went into this volume. All these good people deserve warmest thanks without in any way sharing responsibility for the errors the author has committed.

Finally, a word of gratitude is due to Marlene Garcia, who struggled through the original hand-written manuscript, and to Lee Henderson, who has coped tirelessly with the frustrating eccentricities of word processing machines and the many changes and corrections imposed by the author.

The close-off date of this study is April, 1979.

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ECUADOREAN-PERUVIAN RIVALRY IN THE UPPER AMAZON

ABSTRACT

The dispute between Ecuador and Peru over their boundaries in the Upper Amazon basin is perhaps the lengthiest unresolved controversy among the South American states. It has thrice led to hostilities between the neighboring countries, threatened inter-American solidarity at the onset of World War II, forced a reorganization of the Organization of American States (OAS) and still places obligations on the United States, Argentina, Brazil and Chile as guarantors of a peace settlement concluded in 1942 but not yet completely executed. Although the dispute is quiescent in April 1979, it could be revived either as a result of a chance incident or of the exigencies of domestic politics in either country. In this event it would constitute a problem for the United States and the other guarantors.

ORIGINS

While the origins of the controversy may be traced to rivalries within the Inca Empire before the Spanish conquest, its actual roots are in the colonial period. In those days the territory east of the Andes between the Marañón and Caquetá Rivers was handed back and forth between the Viceroys of Lima and Bogotá until, when independence came, its true jurisdictional status was in doubt. Disagreement over possession of this vast area was a factor leading to war between Colombia and Peru in 1829 in which Colombia gained the upper hand. Peru was prepared at that time to surrender the territory north of the Marañón, but before the details could be worked out, Ecuador split off from Colombia, and the balance of power tilted in favor of Peru.

For many years after independence both disputants were so torn with civil strife that agitation on the boundary issue was limited, but in 1857 the Ecuadorean government offered a large tract of land east of the Andes to European holders of defaulted bonds. This time Peruvian objections were so strenuously pressed that war resulted in 1859-60. The Peruvians occupied Guayaquil

while Ecuador dissolved into anarchy. The Peruvians compelled the leader of one Ecuadorean faction to sign a treaty recognizing Peruvian sovereignty over the trans-Andean region, but this so-called Treaty of Mapasingue was later repudiated by both sides.

Ecuador's claims were considerably weakened by its inability to settle most of the Oriente, as the trans-Andean area was called. Ecuador's population consisted of a small class of landowners, merchants and professionals who controlled the country's politics, on one hand, and masses of mostly Indian agricultural laborers bound to the soil on the other. There was no substantial group of free men to strike out into the wilderness and establish homesteads. The climate in the Oriente was exceptionally trying, combining equatorial heat, almost constant rainfall and hordes of insects which spread disease and made life almost unbearable. Only the nomadic Indians knew how to survive in the jungle, and they periodically attacked and killed would-be settlers.

Another factor which hindered Ecuador's validating its claim was the extreme difficulty of communications and transportation. Although on the map Quito appears much closer to the disputed area, it proved easier to reach from Peru. In 1853 Peru organized a governmental unit with headquarters at Iquitos and from that center gradually expanded its dominion north and west up the rivers.

ATTEMPTED SOLUTIONS

Efforts to solve the boundary tangle were carried out both bilaterally and through arbitration. The García-Herrera treaty of 1890 would have provided Ecuador with a narrow beachhead on a navigable portion of the Marañón, but the Peruvian Congress refused to authorize ratification. In 1905 the parties revived an earlier agreement for arbitration by the King of Spain. The substance of the award being proposed to the King by his Council of State leaked out in 1910; it was generally favorable to Peru and caused a furor of patriotic rage in Ecuador. For a time Peru and Ecuador were on the verge of war, and only an offer of mediation by the United States, Argentina and Brazil averted hostilities. The mediators

were unable to effect a settlement of the basic problem, however, and the King of Spain withdrew as arbiter without issuing an award.

With the passage of time the disparity between Ecuador's strength and that of Peru increased. Three events in the 20th century added to Peru's advantage:

-- In 1922 Colombia and Peru reached agreement on their boundaries in the Amazonian region. Colombia abandoned its claims to the territory between the Marañón and the Putumayo, thus in effect recognizing Peru's sovereignty over most of the disputed region.

-- In 1929 Peru and Chile settled their long-standing controversy over Tacna and Arica, which meant that Chile largely lost interest in supporting Ecuador diplomatically and militarily.

-- The Leticia dispute between Colombia and Peru (1932-34) revealed Peru's deficiencies in military training, armament and communications and filled the Peruvian military with a fierce determination to regain its lost prestige.

From this point on Peru became unwilling to compromise with Ecuador and was prepared to make good its territorial claims by force if necessary. The only diplomatic lever which proved effective against Peru was the threat of airing the boundary problem before a major inter-American conference. To avoid the possibility of such a confrontation at the Buenos Aires Conference for the Maintenance of Peace, Peru consented in 1936 to hold long-deferred talks with Ecuador in Washington after which points still not agreed upon would be arbitrated by the President of the United States. As a preliminary, both sides agreed to maintain the status quo in the disputed zones, an arrangement which the Peruvians interpreted as leaving under their control all areas not actually occupied by Ecuador. This status quo line became a de facto boundary and, with some variations, was the basis for the eventual agreement in 1942.

The Washington talks began on September 30, 1936, but soon bogged down in interminable bickering. The

US Government remained aloof from the negotiations in view of its role as final arbiter, but the Peruvian delegation broke off the talks in September 1938, avoiding the projected arbitration.

RESORT TO FORCE

In the succeeding years relations between Ecuador and Peru deteriorated steadily, and the Peruvian military concentration on the Ecuadorean frontier became increasingly menacing. Although inter-American agreements called for consultation among Foreign Ministers in case of threats to the peace, Ecuador's Foreign Minister, Julio Tobar Donoso, held back from calling for such a meeting, probably for fear of further exacerbating the situation, but he did on April 6, 1941, send a circular note to the other American Republics pleading for support in settling the controversy and offering to accept "any juridical method to attain that solution...."

Possibly in reaction to the circular, the acting Argentine Foreign Minister on May 8 proposed that Argentina, Brazil and the United States offer their "friendly services" to the parties in an effort to effect a settlement. Ecuador accepted at once, but Peru agreed only to accept "good offices" - a procedure limited to bringing the parties together but excluding any form of mediation.

It was too late, however. Alleging Ecuadorean incursions, the Peruvian military took the bit in its teeth and on July 23, 1941, launched a full-scale invasion of Ecuador. Outnumbering the Ecuadorean forces at least four to one, the incomparably better equipped Peruvians within two days had shattered Ecuadorean defenses and proceeded without serious opposition to occupy almost all the indisputably Ecuadorean province of El Oro despite a promise by the Foreign Minister to cease hostilities and retire behind the 1936 status quo line. The military was simply not amenable to civilian control; even after a cease-fire went into effect on July 31, Peruvian forces continued to advance, especially in the trans-Andean sector where Ecuadorean outposts were captured during August and even into September.

Whether by foresight or luck, the Peruvians had chosen the best possible time for their invasion. The

United States was deeply concerned with the war in Europe and the threatening situation in the Far East; the inter-American system had not yet developed the procedures for dealing with intra-hemispheric aggression, and no state wished to involve itself deeply in so intractable a dispute. Nevertheless, considerable pressure was brought to bear on the Peruvians, first to withdraw, and, when they proved adamant, to moderate their demands and submit to mediation.

THE RIO CONFERENCE (1942)

The entry of the United States into the war after the attack on Pearl Harbor reduced our leverage even more. Now, hemispheric solidarity was perceived as essential, and, in particular, Peru's copper, rubber and quinine were urgently required for the war effort. The situation between Ecuador and Peru had to be regularized.

In January 1942 the Foreign Ministers of the American Republics met in Rio de Janeiro to decide on joint action against the Axis, and Brazil's Foreign Minister, Oswaldo Aranha, took the lead in working out a settlement of the Ecuadorean situation. Inevitably the weight of the pressure fell on Ecuador, whose bargaining power was virtually zero. The Ecuadorean delegation was warned that this was their last chance to settle; otherwise the mediators would withdraw their support and Peru might then capture Guayaquil, Loja and Cuenca; even the possibility that Ecuador might be partitioned seemed real to Foreign Minister Tobar.

In the end Tobar signed for the best deal Aranha could extract from the tenacious Peruvians. Ecuador had to surrender its hope for access to the Marañón, but it retained the eastern flanks of the Andes and the headwaters of the Napo, navigable by shallow draft vessels. Peru reluctantly conceded Ecuador the right to free navigation on the Amazon and its northern tributaries. Although Peru got the bulk of the territory, the portion Ecuador retained was higher and enjoyed better drainage. Later it was found to have good deposits of petroleum, and few inhabitants were affected by the new boundary. Considering, Ecuador's relative weakness and its inability to develop a large region economically, the settlement was not altogether unfavorable.

Besides providing for the withdrawal of Peruvian troops from Ecuadorean territory, the Rio Protocol, as the agreement became known, was guaranteed by the United States, Argentina, Brazil and Chile, and the guarantors were to help the parties resolve any disagreements which might arise in the execution of the agreement. Since these obligations continue until the boundary is completely marked and since this task has not yet been completed, the obligations assumed by the guarantors in 1942 still continue. The stalemate persists in spite of an article in the protocol which permits the parties, with the collaboration of the guarantors, to make such reciprocal concessions as may be needed to adjust the boundary to geographic realities.

IMPLEMENTING THE PROTOCOL

The principal obstacle to the execution of the Rio Protocol has been its intense unpopularity in Ecuador and the corresponding pressure on Ecuadorean governments to seize any excuse to seek its revision. Such an excuse appeared when US Air Force aerial photographs revealed that one of the geographic boundary points listed in the protocol did not exist. The objective of successive Ecuadorean governments became the revision of the boundary laid down in the protocol so as to permit sovereign access to the Marañón - an access clearly excluded by the wording and intent of the protocol. Failing to overcome Peru's adamant opposition to such alteration, Ecuadorean revisionism reached a climax in 1960 when President-elect José María Velasco Ibarra announced that the protocol was null because it had been imposed by force contrary to inter-American agreements. The Ecuadorean government has refrained, however, from formally denouncing the protocol and has in practice observed its general provisions.

During the 1950's and '60's the guarantor states were kept busy ironing out the many frontier incidents between Ecuador and Peru. Over time their function came to include almost any friction on the boundaries whether or not the execution of the protocol was involved. By sending out teams of military observers when violence threatened to break out, the guarantors were able to prevent any major armed confrontations, but their several

proposals for the solution of the boundary problem all failed of acceptance by one party or the other.

Viewed as a whole, the guarantors' activities cannot be regarded as more than marginally effective. For one thing, their procedures were exceedingly cumbersome. In deference to Brazil's position as the leading Amazonian power, meetings of the guarantors' representatives were held in Rio de Janeiro and chaired by the Brazilian representative - usually the Foreign Minister. The rule of unanimity was followed, which meant that untold hours were spent in reaching agreement on phraseology. Then any proposal which emerged had to be submitted to the respective Foreign Offices for approval, and the views of the four embassies in Lima and Quito were usually sought. Final decisions frequently required weeks or even months to reach, allowing small incidents to develop into full-blown crises. Once a crisis was past, the representatives in Rio tended to forget about Ecuador and Peru in their natural preoccupation with bilateral relations.

Relations among the guarantors were not always harmonious. Argentina and the United States were at loggerheads during most of the '40's, leaving Brazil to act alone in the name of the guarantors. There was also a tendency for the guarantors to take sides with one or the other disputant; Argentina frequently seemed to favor Peru while Chile leaned toward Ecuador. Any indication that any guarantor might take unilateral action was sure to encounter the disapproval of the others. By and large, the guarantors' operations compared unfavorably with those of the OAS when acting under the provisions of the Rio Treaty of 1947.

THE BOUNDARY AND THE 11TH INTER-AMERICAN CONFERENCE

The strained relations between Ecuador and Peru were to a great extent responsible for restructuring the OAS under the charter revisions of 1967. At the Caracas Inter-American Conference in 1954, Quito had been selected as the site for the next meeting of the highest OAS body in 1959. As the time for the meeting approached, Peru let it be known that it would not attend if Ecuador raised the boundary question; Ecuadorean press

and politicians insisted, on the other hand, that the subject be ventilated. No solution to this impasse could be found, and after a number of postponements, plans for holding the conference at Quito were scrapped and a new system of annual General Assemblies was substituted.

THE HEAT LESSENS

As the '60's merged into the '70's, much of the heat went out of the Ecuador-Peru controversy. In part, this may have been a generational development: those who had experienced the humiliation of 1941 were gradually passing from center stage and being replaced by younger men who found other, fresher issues to exploit. The Ecuadorean electorate seems to have wearied of the boundary dispute; it had been carried as far as it could go. The Rio Protocol had been officially (though not formally) declared null, and since it was out of the question to attack Peru, there really wasn't much more to be done. Primarily, however, interest diminished because other issues arose to replace Amazonia in the forefront of public attention. Happily, many of these issues found Ecuador and Peru on the same side; unhappily, many of them tended to strain relations between Ecuador and the United States.

Beginning in 1952 Chile, Ecuador and Peru had joined in extending their jurisdictions over 200 miles of the sea adjacent to their coasts for the protection of natural resources, especially fisheries. The result was many clashes between Ecuadorean and US interests, culminating in 1971 when Ecuador with Peruvian backing haled the United States before a Meeting of Foreign Ministers of the OAS. Ecuador along with Peru also became a member of the Andean Pact, one of the objectives of which was the restriction and control of foreign investments.

Ecuador welcomed Peruvian President Fernando Belaunde's plans to construct a highway through the eastern scarp of the Andes - carefully avoiding the disputed areas. The two countries are also working on plans for the joint development of frontier zones, and both have had friction with large American petroleum companies. It seems that the United States is contributing to a relaxation of Ecuadorean-Peruvian tensions by replacing

Peru as Ecuador's principal antagonist in international relations.

THE CARTER INITIATIVE

Although there had been inconclusive behind-the-scenes talks between Ecuadorean and Peruvian officials, the boundary issue had receded in public awareness until President Carter raised the question with Presidents Morales Bermúdez of Peru and Poveda of Ecuador on the occasion of signing the Panama Canal treaties in September 1977. President Carter expressed the hope that the boundary dispute might be resolved in such a way as to give Ecuador access to the Marañón. The two presidents agreed to instruct their foreign ministers to discuss the matter.

At first it appeared that a negotiated settlement on the basis of Ecuadorean access to the Marañón might be possible, but it soon became clear that the sovereign and contiguous access sought by the Ecuadoreans would be unacceptable to the Peruvian military and Peruvian public opinion. Talks were suspended after Ecuador's Foreign Minister referred in an address on February 9, 1978, to "Ecuador's essential and unrenounceable rights over the Amazon River," and the boundary question again receded into the background as the military in both countries prepared to turn the reins of authority over to civilian hands.

THE OUTLOOK

It seems unlikely that this long-lasting dispute will be resolved in the near future, and there appears to be little the guarantors can do, jointly or singly, to hasten a solution.

No Ecuadorean government, civilian or military, can publicly recognize Ecuador's permanent exclusion from the great Amazon-Marañón River, and no foreseeable Peruvian government can grant it. The principal threat to peaceful coexistence lies in a chance skirmish of border patrols. The military authorities have attempted to preclude this possibility by keeping their patrols on opposite sides of the Cordillera del Cóndor, which has thus in effect become a de facto boundary.

On July 3, 1978, Ecuador and Peru both became signatories of the Brazilian-sponsored Treaty of Amazonian Cooperation, and Ecuador thereby achieved its ambition to be recognized as an Amazonian state - an ambition long blocked by Peru. A next step toward improved relations might well be the conclusion of the treaty of commerce and navigation foreshadowed in the Rio Protocol. This would prepare the way for Ecuadorean trade down the Napo River whenever the Ecuadorean Oriente becomes sufficiently developed to require surface commercial transport. Whether or not the conclusion of such a treaty would have much economic effect, it would contribute psychologically to better relations, and only in an atmosphere free from tension can agreement on the boundary eventually become possible. Until then, both sides will have to live with the problem - as they have during their entire national existences.

ECUADOREAN-PERUVIAN RIVALRY IN THE UPPER AMAZON

Chapter I

ORIGINS OF THE CONTROVERSY

Early Times

The dispute between Ecuador and Peru over the trans-Andean region drained by the Amazon and its numerous tributaries unquestionably ranks as one of the longest and most intractable in South America. It goes back to the birth of both Republics as independent nations and has its roots in Spanish colonial times. Indeed, one historian traces the hostility between Ecuador and Peru to the division of the Inca Empire by Huayna Capac between his sons Huáscar and Atahualpa, who fought a bitter civil war for sole dominion (1530-32). Atahualpa had his capital where Quito now stands while Huáscar had his at Cuzco. While there was no precise boundary between them, their spheres of influence roughly coincided with present-day Ecuador and Peru. Atahualpa emerged victorious in the war only to fall victim to the daring and guile of the Spanish invaders. 1)

Once the resistance of the Indians was overcome and the rebellion of Almagro put down, Francisco Pizarro, now undisputed master of the vast area from southern Colombia to northern Chile, appointed his youngest brother, Gonzalo, governor of Quito and the surrounding area. Arriving in Quito at the end of 1540, Gonzalo Pizarro immediately undertook to explore the trans-Andean region which was reputed to be rich in gold and cinnamon. In March 1541 he set forth from Quito with 350 Spaniards and 4000 Indians.

Shortly after his departure, his lieutenant, Francisco de Orellana, arrived from Cuzco and followed Gonzalo with 23 soldiers and 14 horses. Orellano found him at the village of Muti east of the mountains and, after Pizarro had spent 70 days searching the area without seeing a single cinnamon tree, Orellana constructed a

1. Alfredo Pareja Diezcanseco, Historia del Ecuador, Quito, 1958. Vol. I, p. 67 ff.

small boat and started down the Napo River, intending to return after exploring the region. The current was so swift, however, that return proved impossible, and thus, inadvertently, Orellana and his little band became the first Europeans to cross the continent via the great river-sea, which he named Amazon because he there encountered, or thought he encountered, Indian female warriors.

On August 24, 1542, Orellana and the remnants of his party reached the mouth of the Amazon and from there sailed back to Spain. The grateful Charles V conferred on him the titles of Adelantado and Captain-General of Nueva Andalucia, as they named the newly-discovered land, and in December 1545 Orellana returned to the Atlantic side of the Amazon where he attempted to found a colony. But his luck had run out: in less than a year he died of fever, and the remaining colonists made their way to the Island of Margarita off the north-east coast of Venezuela where they found other Spaniards. It is interesting to speculate on what changes in present national boundaries might have come about had Orellana's colony at the mouth of the Amazon taken hold. In any case, Orellana's exploit provides Ecuador with one of its principal claims to territory on the Amazon: ownership by right of discovery.

A somewhat more realistic date for the origin of the Ecuador-Peru dispute might be the separation of the Viceroyalty of Nueva Granada from that of Peru which first occurred in 1717. Prior to this time, in 1563, a Royal Audiencia had been established in Quito because of its distance from Lima and the difficulties of communication. The basic function of an Audiencia was that of a court of justice, but the President of the Court also exercised administrative functions on behalf of the Viceroy and, again because of poor communications, enjoyed a very considerable degree of autonomy. The Audiencia of Quito (also called the Presidency of Quito) was abolished with the creation of the Viceroyalty of Santa Fe in 1717, but the opposition raised by the Viceroy of Lima against this division of his territory was such that the new jurisdiction was suppressed in 1723 only to be reestablished in 1739. The Audiencia of Quito was again attached to the Santa Fe Viceroyalty but continued in existence until independence. Quito thus found itself midway between the two viceregal capitals and a bone of contention between them.

As originally constituted, the Audiencia of Quito exercised jurisdiction over a large area including, on the south side, the towns of Jaén, Valladolid, Loja, Zamora, Cuenca and Guayaquil; in the east Canelos and Quijos; and on the north, Popayán, Cali, and the port of Buenaventura, all today in Colombia. The territories included in this poorly defined but enormous zone later became the basis for Ecuadorean territorial claims and sources of friction with both Colombia to the north and Peru to the south.

The Cedula Of 1802

A significant element was added to the incipient dispute when the King of Spain on July 15, 1802, issued a decree separating most of the trans-Andean territory from the Viceroyalty of Santa Fe and the province of Quito and attaching it to the Viceroyalty of Peru. This decree and the changes it effected had been under consideration for some time; however, its exact intent is still a matter of disagreement between Ecuador and Peru.

Explorations and sporadic attempts at settlement of the region drained by the headwaters of the Amazon finally revealed that the area had but scant aluvial gold deposits, that much of the terrain was marshy and subjected to fantastically heavy rains, that it was extremely unhealthy for the Spaniards, and that the Indians were untamable and would not work for the white man. Limited success was achieved by the Jesuits who succeeded in establishing a number of mission villages. However, in 1767-8 the Jesuits were expelled from Spain and its overseas dominions, and their villages rapidly declined or disappeared entirely. A report to the Crown in 1779 stated that in the early days of the conquest there had been many Spanish cities and towns in the region of the Santiago River but that few settlements still existed and these scarcely merited the name of hamlet. 1)

1. Vicente Santamaría de Paredes, A Study of the Question of Boundaries between the Republics of Peru and Ecuador, translated by Harry Weston Van Dyke. Washington, D.C., 1910, pp. 90-91.

Various provincial and sub-provincial groupings had been tried out during the 16th and 17th centuries, but toward the end of the 18th century this vast and largely unexplored region was divided into two governmental units, both, it may be assumed, of quite rudimentary character. The principal one was the Government and Commandancy General of Mainas, which included the Marañón River and its northern and southern tributaries as far east as the Portuguese settlements along the Amazon. The other was the Government of Quijos (sometimes Quijos and Macas) which lay directly east of Quito and included the headwaters of the Coca and Napo Rivers; its seat of government was the town of Baeza, and it extended on the north to the territory attached to Popayán. It need hardly be pointed out that the precise limits of these sparsely inhabited regions were never marked out and that the only means of communication was along the rivers except where a few rough trails led over the mountains to the settled portions of the Spanish Empire. A census by the governor in 1727 showed a total population, excluding wild Indians, of 4,904 "persons of all kinds." 1)

A key figure in the issuance of the Cedula of 1802 was don Francisco Requena, who was chief engineer on a commission to determine the boundaries between Spanish and Portuguese territories during much of the final quarter of the 18th century and served during the latter years of the century as governor of Mainas. Even his Ecuadorean detractors state that he was "intelligent, active, perserving and of great ability", to which they also add that he was extremely ambitious and unscrupulous. 2) He must also have been extremely hardy, since he spent 17 years as governor of Mainas, where living conditions must have been primitive even by the standards of the times.

1/ Cornejo, Mariano H. and Felipe de Osma, Arbitraje de Límites entre el Perú y el Ecuador. Documentos anexos a la Memoria del Perú. Madrid, 1903. Vol. III, Document 86, p. 216 ff.

2. Jorge W. Villacrés Moscoso, Historia diplomática de la República del Ecuador. Guayaquil, 1967-1976. Vol. I, p. 203.

On September 15, 1777, Requena prepared a report regarding the difficulty of repelling Portuguese infiltrators because of the hazards of transportation from Quito and expressed the hope that an easier route could be found through Peru. Two years later, in response to an inquiry from the Council of the Indies, Requena prepared a detailed report and, in an annex of March 12, 1781, he described the trans-Andean region and recommended that all the missions there be combined into a new bishopric whose seat should be in the area, thus facilitating visitations by the bishop. In one report Requena noted that the town of Santiago de las Montañas, located near the mouth of the Santiago River where it entered the Marañón, was nominally attached to the diocese of Trujillo but had never been visited by the bishop. Requena's reports of 1779 and 1781 were transmitted by the President of the Audiencia of Quito to the Council of the Indies without dissent.

Requests for reports poured in from the Council and follow-ups were sent when they were not forthcoming; finally in 1794 the Council instructed the Viceroy at Santa Fe (Bogotá) to inform himself on the subject, to which the Viceroy replied that he was not able to but that "no one can do this better than Sr. Requena." 1) On June 21, 1795, the Audiencia transmitted the documents requested by the Council and stated that in its opinion, the reports of Requena were "most fundamental and judicious."

After 17 years of hard living in the backwoods of America, Francisco Requena was recalled to Spain, given the title of Marshal and appointed a member of the Council of the Indies. He was finally in a position to act on the recommendations he had been sending for so many years. In a report of 1799, he pointed out that the missions had deteriorated badly since the departure of the Jesuits and since Mainas had been attached to the Viceroyalty of New Granada (Santa Fe) due to the difficulties of communication between the area and Quito. He said that the boundaries between the two Viceroyalties had been fixed "...either by reason of scant reflexion or, perhaps, (with) but little knowledge of the conditions." 2)

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1. Santamaría de Paredes, Study, p. 67.
 2. Santamaría de Paredes, Study, p. 68.

Requena summarized his recommendations thus: "The creation of the bishopric, good missionaries and the subordination of the governor of Mainas to the Viceroy at Lima are the three principal needs of the moment, and which, as a fundamental basis, will facilitate all the others that must in the future be provided for the civilization of the people, the security of the frontiers, for the commerce of the missions with the provinces of Peru, and some future profits for the royal exchequer." 1) Requena's proposals were accepted by the Council of the Indies on March 28, 1801, and, after the cumbersome formalities characteristic of the proceedings of the Spanish Royal Court, emerged in formal legal language as the Royal Cedula (Decree) of July 15, 1802.

At this distance in time it is impossible to discern precisely the motivation of Requena in making his proposals which gave such joy to later generations of Peruvians and such irritation to the Ecuadoreans. One Ecuadorean historian, Jorge W. Villacrés Moscoso, stated that Requena hoped to have the trans-Andean region created a Viceroyalty with himself as first incumbent; also that on his first arrival in America he had been received coolly in Bogotá and Quito but made much of in Lima; hence he had sworn eternal hatred against the Quiteños. 2)

All that can be said is that the authorities in both Bogotá and Quito appear at the time to have placed complete confidence in Requena's judgment and to have endorsed his reports: perhaps they were glad to have a man who was willing to spend 17 years in upper Amazonia; surely no other Spanish official had equivalent knowledge of the area.

The true import of the Cedula of 1802 is a subject of heated discussion between Peruvians and Ecuadoreans. Clearly, persons regarded as experts in Spanish colonial government have reached differing conclusions; consequently, it will be helpful to quote the most pertinent portions: 3)

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1. Santamaría de Paredes, Study, p. 69.
 2. Villacrés, Historia diplomática, Vol. I, pp. 204 205.
 3. Text from Villacrés, Historia diplomática, Vol. I, pp. 203-204. Translation by author.

I have resolved that there be separated from the Viceroyalty of Santa Fe and from the Province of Quito and joined to that Viceroyalty (that of Peru) the Government and Commandancy General of Mainas with the villages of the Government of Quijos, except that of Papallacta, since all of them are on the banks of the River Napo or near it, extending that Commandancy General not only down the Marañón to the frontiers of the Portuguese colonies but also to all the rivers which enter the Marañón on its north or south banks, such as the Morona, Huallaga, Pastaza, Ucayali, Napo, Yavari, Putumayo, Yapurá and others of lesser importance, up to the point where, because of their falls and impassable rapids, they cease to be navigable; the towns of Lamas and Moyobamba should also be part of the same Commandancy General so that the ecclesiastical and military jurisdictions may coincide to the extent possible in those territories.

To this end I command you that, since the governments of Mainas and Quijos are attached to your Viceroyalty, you provide as much assistance as you deem necessary and as the Commandant General may request for the purpose not only of the progress and preservation of the villages and the care of the missionaries but also for the security of my dominions; preventing the advance into them of vassals of the Crown of Portugal, appointing such subordinate officials or lieutenants of the governor as you deem necessary for the defense of the frontiers and administration of justice.

I have likewise resolved to place all those villages and missions together under the care of the Apostolic College of Santa Rosa de Ocopa, of that Archbishopric (i.e., the Archbishopric of Lima.)...

I have also determined to set up a bishopric in the said missions...

The decree then proceeded to list the various missions to be included in the new diocese. Besides all those in Mainas and Quijos (except Papallacta), specifically mentioned were Santiago de las Montañas, which was on the River Santiago, Canelos on the Bobonaza, and the missions on the Putumayo and Yapurá.

The Peruvians contend that the vast upper Amazonian territory was thereby transferred to the Viceroyalty of Lima and formed part of it when Peru became an independent state. Hence in their view it has been part of the Republic of Peru since its inception.

Ecuadoreans argue that the trans-Andean area never in fact was transferred to Peru and hence formed part of the patrimony first of Gran Colombia and later of Ecuador. Jorge W. Villacrés Moscoso states flatly, "The cedula was exclusively ecclesiastical and military in nature and not territorial." 1) He points out that placing the missions under the Archbishop of Lima could have no political significance and further, that although the Viceroy in Santa Fe de Bogotá put his "Cumplase" (let it be done) on the document, it was not in fact executed since the governor, although subordinate to the Viceroy in Lima, continued to draw his salary from Quito. Furthermore, in 1806 troops were sent from Quito to repel an invasion by the Portuguese; the bishops of adjacent dioceses should by custom have met to set the boundaries of the new see of Mainas, but this never took place. Hence, the cedula was null. 2) It is also argued that the proper procedures for making a territorial transfer were not followed and that this reinforces the point that only a partial transfer of authority was intended. 3)

Whatever may have been the intent of the Spanish monarch and his advisers, certain portions of the cedula were open to varying interpretations which had a bearing on the dispute which later arose between Ecuador and Peru. In describing the area to be transferred to the Viceroyalty of Lima, the cedula included "the villages of the Government of Quijos, except that of Papallacta..." By present-day roads, Papallacta lies about 65 kms. east of Quito at the head of a narrow valley sloping downward to Baeza, the seat of government of the old

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1. Historia diplomática, Vol. I, p. 206.
 2. Villacrés Moscoso, Historia diplomática, Vol. I, pp 206-208.
 3. Nicolás Clemente Ponce, Límites entre el Ecuador y el Perú; Memorandum para el Ministerio de Relaciones Exteriores de la República de Bolivia. Quito, 1936, p. 17.

province of Quijos, about 60 kms. further east; consequently, if this description were to be followed, the boundary of the Comandancia General of Mainas would have been along the eastern scarp of the Andes only 40-50 miles from Quito. On the other hand, elsewhere in the cedula the boundary is stated to be at the headwaters of navigation on the various rivers tributary to the Marañón. This would place the boundary much further to the east - much closer to where it is today. In later times, Peru, while holding firmly to its assumed rights under the Cedula of 1802, indicated a willingness to submit this portion of its claims to arbitration since the provisions of the cedula were not clear.

Execution of the Cedula of 1802

Surviving documentation indicates that the local authorities took at least routine steps to give effect to the Royal Cedula of 1802. The President of the Audiencia of Quito, Baron de Carondolet, had the decree duly registered in the files of the Audiencia "so that it may be recorded that the territories therein specified are separated from the jurisdiction of its district." 1) On February 20, 1803, Baron Carondolet communicated the royal decree to the governor of Mainas, Diego Calvo, stating that "His Majesty has been pleased to incorporate that Government (Mainas) and the missions into the Viceroyalty of Peru, detaching them from that of Santa Fe," and the governor, in turn, notified the various towns under his jurisdiction and wrote to the Viceroy in Lima, the Marqués de Avilés, expressing his pleasure at being placed under his orders. 2) The Viceroy in Bogotá, don Pedro de Mendinueta, also wrote to the Viceroy of Peru under date of March 29, 1803:

His Majesty having decided upon the separation of the Province of Mainas from the jurisdiction of this Viceroyalty and its addition to that of Peru, and the Royal Decree making such provision having been submitted to me and communicated to the Governor

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1. Santamaría de Paredes, Study, p. 107.
 2. Santamaría de Paredes, Study, p. 107.

of that Province in order that he may thereafter be under the orders of Your Excellency, I also inform Your Excellency of this so that in the knowledge that your powers over that territory are now established, Your Excellency may make such dispositions in connection therewith as you may deem most appropriate to the service of the King who has confided it to your care. 1)

Compliance by the ecclesiastical authorities also followed in a routine fashion. The Holy See authorized the creation of the new diocese in 1803; in 1805 Fray Hipólito Sánchez Rangel was appointed Bishop and took possession of his See in 1808. The assignment proved an unhappy one: Sánchez Rangel soon found himself at odds with Governor Calvo and with the Franciscans at Ocopa who were in charge of the missions; and he was unable to comply with repeated royal orders to prepare a map of his district, a task which has proven difficult even today with modern facilities. In 1811 he wrote to the King stating that there were great obstacles to carrying out his mission because, in setting up the bishopric, many points had not been taken into consideration. He begged the King "to release me from this exile...because I no longer have the courage to suffer more; I am sick, and this (responsibility) cannot be discharged, at least spiritually, unless other measures are adopted, at much cost, and over many years." 2)

Following receipt of the unhappy bishop's letter, the Council of the Indies took the matter under consideration together with a proposal of the current President of the Audiencia of Quito that Mainas be reincorporated into his territory and that the whole become a Captaincy General on a par with Venezuela and Chile. After due deliberation the Council decided in 1818 to reject the proposal for a Captaincy General and to maintain the provisions of the Cedula of 1802 as regards Mainas. The Council's recommendations were accepted by the King in 1819, and various decrees were issued for improving

1. Santamaría de Paredes, Study, pp. 107-108.

2. Ponce, Límites, pp. 27-28; Santamaría de Paredes, Study, pp. 108-109.

the situation. Before these could be put into effect, however, the sun had set on the Spanish Empire in South America and the day of independence had dawned. 1)

Independence

In the battle of Pichincha on May 24, 1822, the royalist forces were decisively defeated and the 13-year struggle for independence was ended so far as what is now Ecuador was concerned. A few days later, on May 29th, a town meeting in Quito declared independence from Spain and union with Gran Colombia, the great creation of Bolívar, which embraced the territory now under the jurisdictions of Venezuela, Colombia and Ecuador. There was a little bitter with the sweet for the Quiteños, since the northern portion of the former Audiencia, including the cities of Buenaventura, Cali, and Popayán, was placed under the control of Bogotá, but this seems to have occasioned little heartburning at the time. Guayaquil, which had oscillated between the Viceroyalties of Lima and Santa Fe, was incorporated into Colombia by proclamation of Bolívar on July 13, 1822, against the wishes of the merchants in control of the Cabildo, who wanted either to be independent or to join Peru. As late as mid-19th century there were reported to be elements in Guayaquil which preferred union with Peru to control from Quito.

Bolívar and his colleagues in the Colombian government lost no time in attempting to regularize relations with Peru, which had become the site of the last major military operations against Spain. In May 1822 Bolívar sent Joaquín Mosquera to Lima with instructions to negotiate a treaty of alliance and confederation and, as second priority, a boundary treaty based on the principle of uti possedetis of 1810. This principle simply meant that the boundaries of the various Spanish governmental units as they existed at the beginning of the Wars of Liberation would remain as the boundaries of the newly independent states unless modified by mutual agreement. While perhaps useful as a rule of thumb in well-settled areas, attempts to apply ..

1. Santamaría de Paredes, Study, p. 110.

it in largely uninhabited and unmapped areas in the interior led to endless confusion and a series of disputes many of which continued well into the 20th century and some of which, like that between Ecuador and Peru, are still very much alive.

Mosquera found it quite easy to conclude the treaty of alliance since Peru badly needed the assistance of Bolívar's troops and military experience. However, the Peruvian Foreign Minister, Monteagudo, was reluctant to conclude any agreements on boundaries at a time when sizeable areas of his country were still under royalist control. He also suggested that the principle of self-determination of people should be considered in marking the frontiers, probably with the expectation that some territories, such as the province of Jaén, which had formed part of the Audiencia of Quito, would voluntarily associate themselves with Peru. Although Mosquera protested Peruvian plans to hold elections for members of a constituent assembly in Jaén and parts of Mainas which he considered to be rightfully Colombian, he finally agreed to postpone the discussion of boundaries until the Peruvian Congress should have met. 1) A treaty signed in 1823 which provided for boundaries to be established on the basis of uti possedetis as of 1809 failed of ratification by the Colombian Congress.

War Between Colombia and Peru

After the final achievement of Peruvian independence in the battle of Ayacucho (1824) relations between the allies deteriorated rapidly. Bolívar was elected President for Life of Peru as part of his plan to unify South America (except Brazil) under a strong central government, but he encountered increasing opposition from Peruvian politicians and was eventually forced to leave the country. In June 1827 the Colombian Minister in Lima was declared persona non grata and the Colombian government, headed by Bolívar, refused to receive a Peruvian envoy sent to "explain" the ouster of the Colombian from Lima.

1. Villacrés Moscoso, Historia diplomática, Vol. I, p. 191-194.

In sending the Peruvian home the Colombian Foreign Minister stated that, if the Peruvian government did not return the provinces of Jaén and Mainas within six months, Colombia would resort to arms.

While there were a number of sources of friction between the two countries, Bolívar's hurt pride not being the least of these, the territorial issue remained central to the dispute. Essentially four territories were involved:

1) Guayaquil: This major port city had long been part of the Viceroyalty of Santa Fe and the Audiencia of Quito, but in 1803 had been added to the Viceroyalty of Peru. Later, in 1819, the King of Spain ordered that the Audiencia of Quito would have jurisdiction over matters of justice and finance pertaining to Guayaquil but that its military defense should be controlled from Lima. Thus the legal situation was thoroughly confused when, on October 9, 1820, a band of patriots took control of the city and declared it an independent republic. This situation continued until Bolívar personally assumed control and pressured the local junta into requesting annexation to Colombia in July 1822. After the war, Peru harbored aspirations to reincorporate the port into its territory.

2) Tumbes: The town of Tumbes at the mouth of the river of the same name had been allotted to Santa Fe in the original disposition of territories but, according to Peruvian historians, had for some time been administered as an integral part of the Viceroyalty of Peru and had adhered to the Peruvian Declaration of Independence of January 7, 1821. 1)

3) Jaén: The province of Jaén de Bracamoros had during most of the 18th century been an object of dispute between the Viceroy of Lima and Santa Fe. It occupied a mountainous area south of Loja and was surrounded on three sides by the Peruvian provinces of Piura, Cajamarca and Cachapoyas; nevertheless it was legally attached

1. Jorge Basadre, Historia de la República del Perú 1822-1933. 6th edition, Lima, 1968. p. 206.

to Santa Fe for temporal control while under the bishop of Trujillo for spiritual matters. However, after the arrival of General San Martin in Peru, a popular assembly in Jaén declared the province independent of Spain on May 8, 1821, and placed itself under San Martin's orders.

Sucre and other Colombians at first protested the participation of Jaén in Peruvian congressional elections, but Bolívar appears to have considered trading off Jaén for the portion of Mainas north of the Marañón since he knew the provisions of the Cedula of 1802 of which the Peruvian authorities were apparently unaware. Jaén thereafter functioned as an integral part of Peru. 1) However, its incorporation into Peru tended to cloud the Peruvian legal case since it had unquestionably been attached to the Viceroyalty of Santa Fe in 1809-10, and the Peruvians were consequently required to add self-determination to the principle uti possedetis in pursuing their claims to Mainas.

4) The vast and inaccurately charted territory called Mainas (Maynas) included the vast upper Amazon region east of the Andes and embraced the Marañón River and its tributaries north and south up to the boundary of Portuguese dominions. Except for a handful of missionaries, traders and prospectors, the bulk of the inhabitants were untamed Indians, and it may be questioned how much real control the Spanish colonial authorities actually exercised. This is the area in dispute today between Peru and Ecuador and through which Ecuador must advance if it is to achieve its objective of an outlet on the Marañón.

As war between Colombia and Peru became imminent, the American Consul in Lima, William Tudor, viewed the situation as a nefarious plot by Bolívar and his henchmen to reconquer Peru, and, apparently at Tudor's suggestion, the Peruvian Foreign Minister, F. J. Mariátegui, on November 16, 1827, wrote a letter to Secretary of State Henry Clay describing the threat to Peru and asking mediation by the United States. A similar letter was addressed to the British Foreign Secretary, and Mr. Tudor hoped

1. Santamaría de Paredes, Study. pp. 175-176; pp. 179-185.

that the United States and Great Britain, either jointly or separately, would accede to the Minister's request to save Peru from "a deplorable fate". 1)

The U.S. reply did not arrive until the shooting was over. On presenting his credentials as Chargé d'Affaires on November 30, 1829, Mr. Samuel Larned informed the Peruvian President, Marshal Gamarra, of the President's earnest desire for peace and said the U.S. Minister in Bogotá had been instructed to inform the authorities there of the President's "anxious wish that war might be averted, if it had not broken out - or might be honorably terminated, if it had commenced." Mr. Larned noted in his despatch that the conclusion of peace had deprived the subject of much of its importance. 2)

War had actually been declared on July 3, 1828, and hostilities commenced with a Peruvian naval attack on Guayaquil in August. Operations fell into two distinct spheres: sea and land. A Peruvian naval squadron captured Guayaquil on January 19, 1829, while the President of Peru, Marshal José de La Mar, personally led an army into Colombia with a view to capturing Cuenca. The Peruvians met the Colombian forces under Marshal Antonio José de Sucre at the Portete de Tarqui and were decisively checked (February 27, 1829).

Besides being up against the military genius of Sucre, La Mar had to cope with two ambitious and disloyal members of his own staff, Generals Orbegoso and Gamarra. These two generals met with Sucre's representatives the day after the battle and signed the Convention of Girón by which Peru was to evacuate Colombian territory including Guayaquil after which a definitive peace treaty would be signed. The basis for the territorial settlement was to be the political division between the two Viceroyalties in August 1809, and it was agreed that a commission

1. William R. Manning, Diplomatic Correspondence of the United States concerning the Independence of the Latin-American Nations. New York, 1925. Vol. III, Doc. 1004, p. 1837 ff.

2. Manning, Diplomatic Correspondence. Vol. III, Doc. 1008, p. 1846 ff.

be appointed to demarcate the boundary. La Mar ratified this agreement, but once out of Sucre's reach he withdrew his approval, refused to surrender Guayaquil and threw the Colombian representatives into jail.

At this point it appeared that the war might be resumed and Bolívar himself arrived to lead the Colombian forces gathering to attack Guayaquil. However, on the night of June 6 La Mar was overthrown by Gamarra and shipped off to an exile in Costa Rica from which he never returned. Peace negotiations were thereupon renewed, and Colombian troops reoccupied Guayaquil on July 20, 1829.

The Treaty Of Guayaquil

The treaty of peace between Colombia and Peru, concluded at Guayaquil on September 22, 1829, is a basic document for a consideration of the boundary dispute between Ecuador and Peru and constitutes one of the cornerstones of Ecuador's claim. The Colombian delegate, Pedro Gual, and the Peruvian representative, José Larrea y Loredó, met in Guayaquil on September 16 and by September 22 had agreed upon a complete peace treaty consisting of 20 articles. The boundary problem was only one of many with which they had to deal, and hence it is not surprising that the agreement was imprecise in many of its details. Further, the state of the plenipotentiaries' geographical knowledge of the trans-Andean region was not such that they could have been precise even if they had taken all the time in the world.

The boundary question was first taken up in Article V. 1) In translation it reads in part: "Both parties recognize as the boundaries of their respective territories the same (boundaries) as the former Viceroyalties of New Granada and Peru had before their independence with only such variations as they may deem advisable to agree upon between themselves...." The balance of the article explains that each might surrender small bits of territory to

1. The full Spanish text of the treaty may be found in Villacrés Moscoso, Historia diplomática, Vol. I. p. 363 ff.

to make the line more natural and avoid inconvenience for authorities and inhabitants of the frontier regions.

The flaws in this clause are immediately apparent: in the first place, the boundaries between the two Viceroyalties had never been clearly marked, so that even in settled areas there was room for dispute. The situation in the upper Amazon basin was of course known only as regards the major geographic features.

A second omission was the failure to establish a date on which the boundaries of the old Viceroyalties were to be taken. It will be recalled that the Convention of Girón had specified August 1809 when the first uprising had occurred in Quito, as the determining date. It is possible that Gual and Larrea assumed that this was the date to be used, but they failed to put it in writing. Furthermore, the use of the Spanish word "antiguo" to describe the Viceroyalties opened the door for further confusion, since "antiguo" can mean either "old" or "former". Peru prefers the latter, but Ecuadoreans have argued that the intention of the phrase is to refer to the original extent of the Viceroyalties, going back to their separation in 1740 and hence obviating the possible effects of the Cedula of 1802.

Doubtless the original negotiators considered these details to be unimportant since in Article VI they provided for a boundary commission which would demarcate the boundary in accordance with the preceding article, beginning at the Rio Tumbes in the Pacific Ocean. This strengthens the Ecuadorean argument as to the date since the mouth of the Tumbes had been specified in the Cedula of 1740 as the dividing point between the two Viceroyalties.

The commission was to begin work 40 days after the ratification of the treaty and complete its work within six months. Any problems which the two governments could not work out were to be referred to a "friendly power" for binding arbitration. The treaty was ratified by both sides in October 1829, and the ratifications were exchanged in Guayaquil on October 27. Even with today's means of rapid communication and travel it would be something of a speed record to perfect a major treaty between September 22 and October 27.

This hopeful start toward a solution to the problem came to naught as the boundary commission never met. The Colombian commissioners, Eugenio Tamariz and Agustín Gómez arrived at Tumbes in December 1829 but, since the Peruvian commissioners were not on hand, they decided to postpone beginning their task until the end of the rainy season. The Peruvian commissioners were appointed in April 1830 but on arrival in Tumbes found the Colombians had already left.

Meanwhile, after the ratification of the treaty of peace, Bolívar named General Tomás Cipriano Mosquera as Colombian Minister in Peru with instructions to see to the execution of the treaty, particularly that portion dealing with the boundaries. Unlike his Peruvian counterpart, General Mosquera was aware of the existence of the Cedula of 1802 and wrote to Bolívar, inquiring what to do should the Peruvians, on the basis of that document, lay claim to the left bank of the Marañón. Bolívar replied that Mosquera should insist on the Marañón as the boundary from Jaén down and dismissed the cedula with these words, "As for that cedula, if it ever existed, it was never put into force, as I am very well informed on this point." 1) Fortunately for Mosquera, the Peruvians agreed to the line of the Marañón without demur. The principal point at issue was the fate of the province of Jaén, which Bolívar was determined to retain for Colombia. He therefore instructed Mosquera to insist on using the Huancabamba River as the boundary whereas the Peruvians insisted on the river Chinchipe, which would have left Jaén in Peru.

The Pedemonte - Mosquera Protocol

This document is unquestionably one of the most controversial in a long series of decrees and agreements which have been subject to varying interpretations by the parties to the dispute. According to the Ecuadorean version, General Mosquera continued his conversations in Lima, first with Foreign Minister José María Pando

1. Jorge Pérez Concha, Ensayo histórico - crítico de las relaciones diplomáticas del Ecuador con los Estados limítrofes. 3rd ed. Guayaquil, 1968. Vol. I, p. 72.

and then with his successor, Carlos Pedemonte. With the latter Mosquera is said to have signed a protocol on August 11, 1830, in which the Peruvian agreed that the Marañón should constitute the boundary between the two states; Pedemonte had proposed the Chinchipe as the boundary east of Jaén while Mosquera had, as before, insisted on the Huancabamba. Finally Pedemonte had suggested that this point be left in suspense until Mosquera had consulted his government with the view to modifying its position. Thereupon Mosquera had returned to Colombia.

In the Ecuadorean view, this agreement constitutes a protocol of execution of the Treaty of Guayaquil and so, presumably, required no separate ratification; all that remained was for the boundary commission to meet as provided by the treaty and mark out the boundary as agreed upon. However, events had been moving rapidly in other theaters: in November 1829 Venezuela had withdrawn from Colombia and on May 13, 1830, the Southern Department constituted itself the State of Ecuador, thus bringing an end to Gran Colombia. In Quito, besides being occupied with other matters, no one knew what agreement might have been worked out by Mosquera in Lima.

From this point onward the mystery of the Pedemonte-Mosquera Protocol deepens. Neither Pedemonte nor the Colombian Foreign Minister mentioned it in their reports to their respective Congresses for 1830, and Peruvian authorities state that no copy was found in the archives of the Foreign Ministry. They also claim that, according to press accounts, General Mosquera sailed for Colombia on August 10, the day before the alleged protocol was signed, and that furthermore Dr. Pedemonte was out of Lima at the time and that the Minister of Government, Matias León, was in charge of the Foreign Office between August 7 and August 11. In accounts of his mission published in 1843 and 1853, Tomás Mosquera did not mention the protocol nor did he refer to it on his arrival in Guayaquil in 1830. 1)

1. Basadre, Historia del Perú, 6th edition, Vol. I, pp. 350-353.

Ecuadorean historians do not contest the fact that the protocol dropped out of sight for decades after 1830. Jorge Pérez Concha reports that on May 30, 1853, Mosquera wrote a rather boastful letter to the then Colombian Foreign Minister stating that in 1830 he had succeeded in settling the boundary problem along the lines of the Tumbes and Marañón Rivers, leaving undecided only the question of whether the boundary in between should follow the Huancabamba or the Chinchipe. Mosquera made a similar statement in a letter of April 3, 1859 to Dr. Benigno Malo, Ecuadorean Minister in Lima. However, it was not until 1870, 40 years after the alleged date of its signature, that Mosquera handed the original of the protocol to the Colombian Minister in Lima, who retained the original but sent a copy to Bogotá. In 1878 the Ecuadorean Minister in Lima, Vicente Piedrahita, requested his Colombian colleague to give him a certified copy; in this instance the Colombians refused, but in 1904 they supplied the Ecuadoreans with a certified copy.

Thus by the time Ecuador became an independent state, the basic documents bearing on its boundary with Peru were already in existence, and much of the controversy through the years has raged around them. It might seem foolhardy to attempt to weigh the merits of the conflicting claims where so many distinguished jurists have reached opposing conclusions. However, before sketching the course of the dispute after 1830, it may be well to pause for a moment to review the evidence.

Reviewing The Claims

1. Discovery. The great exploit of Francisco de Orellana in crossing the mountains from Quito and sailing down the Amazon to the Atlantic is usually given as the first reason why Ecuador has a right to claim the territory between the Andes and the Brazilian border. The Peruvians counter this by pointing out that Gonzalo Pizarro, the governor, and Orellana actually began their travels from Cuzco and were under the orders of Francisco Pizarro, whose headquarters were in that city. Hence in their opinion Peru's claims by right of discovery are at least equal to Ecuador's. They also say that if Pizarro's and Orellana's explorations establish the Ecuadorean claim, then Panama has a right to claim Peru since Francisco Pizarro sailed from there on his way to conquer the Incas.

Discovery alone is not regarded in international law as providing a strong basis for a claim to sovereignty, especially if the territory in dispute was settled and administered by another state. There must be effective occupation to establish a strong claim. Furthermore, the Pizarros and Orellanas were and thought of themselves as Spanish; neither Peru nor Ecuador had any claims to their loyalty. Neither country therefore has a strong claim based on discovery.

2. Administration. The entire upper Amazon basin was under the jurisdiction of the Audiencia of Quito from 1563 at least until 1802. The Audiencia itself governed under the authority of the Viceroy of Lima until 1739-40, when it was transferred to the Viceroyalty of Santa Fe. How intimate the control of the President of the Audiencia was over the governors of those distant and inaccessible provinces need not concern us; it may be assumed that the governmental structures were simple since the inhabitants were few and the principal concern of the Spanish authorities was repelling raids by hostile Indians and trying to check the constant advance of the Portuguese up the Amazon and its tributaries. Both Ecuador and Peru, in the early days of their independence, accepted the division between the two former Viceroyalties as the boundary between them, subject to such alterations as might be mutually agreed upon. Hence, the status of the trans-Andean territory depended on the interpretation given the Cedula of 1802, which ostensibly transferred the area back to the Viceroyalty of Lima.

3. The Cedula of 1802. As regards this controversial document, the Ecuadoreans assert that it did not transfer territory but only authority over ecclesiastical and military affairs, and that in any case the decree was never put into effect. Documents of the period do not indicate that contemporaries were aware of this distinction.

The first sentence of the decree states the Monarch's order to "separate" Mainas and most of Quijos from Santa Fe and "add" them to Lima. 1) After describing the territorial limits in the contradictory fashion already

1. The Spanish words are "segregar" and "agregar", which do not appear equivocal.

noted, the decree instructed the Viceroy of Peru to assist the Commandant General of Mainas in "the advancement and preservation of the villages, the care of the missionaries" and also in protecting the King's dominions from the Portuguese. To this end, the Viceroy was authorized to appoint subordinate officers "for the defense of the frontiers and the administration of justice." 1) Thus the powers of the Viceroy were to include the development and economic welfare of the villages, the protection of the missionaries, defense, the appointment of officers and the administration of justice. This seems to be a rather complete list of governmental functions in so primitive an area where governmental institutions were not highly developed. Even more significant is the failure to mention any functions to be retained by the Viceroy of Santa Fe or the Audiencia of Quito. The impression remains that the clear intent of the cedula was to transfer the administration of Mainas and Quijos except Papallacta lock, stock and barrel to the Viceroy at Lima.

As noted above, the various authorities all acknowledged and proclaimed the Cedula of 1802, and there is ample evidence that the Viceroy of Peru continued during the few remaining years of Spanish rule to appoint governors and other officials, to provide for the collection of taxes and to make various administrative rulings. 2) The request of 1814 by the President of the Audiencia of Quito that Mainas be returned to his jurisdiction would scarcely have been necessary had the Cedula of 1802 not been put into force.

Ecuadorean writers advance as evidence of the non-execution of the decree that in the Guía de Forasteros for 1822 Mainas was listed under the Viceroyalty of New Granada although in previous years it had been listed under Peru and in some years under both. 3) The Guía de Forasteros was the handbook describing the various

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1. Villacrés Moscoso, Historia diplomática, Vol. I, pp. 205-206.
 2. Santamaría de Paredes, Study, pp. 111-115.
 3. N. Clemente Ponce, Límites entre el Ecuador y el Perú. 4th edition Quito, 1936, pp. 30-31.

governmental units of the Spanish Empire issued by the Royal Court in Madrid. Lacking other confirmation it would not appear sufficient evidence of a change of administrative authority.

4. The Treaty of Guayaquil. This agreement represented the nearest approach to a settlement achieved prior to 1942, and it would certainly have been the most favorable from an Ecuadorean point of view. The circumstances of its signature and ratification were determining: Peru was in a state of political disorder internally and disarray internationally. President La Mar's policy of invading Colombian territory, apparently with the hope of regaining Guayaquil for Peru, had been decisively checked by Sucre. Whether Peru actually suffered a serious defeat at Tarqui is subject to debate, but the consequence was the same: Peruvian forces withdrew from Colombian territory and, after some hesitation, evacuated Guayaquil. La Mar was overthrown, and the new and unsteady regime which succeeded him seems to have been set on peace with Colombia at any reasonable price; the backwoods areas beyond the mountains were clearly subject to barter, especially if Peru could thereby retain the province of Jaén. The choice of José Larrea y Loredó as the Peruvian negotiator was evidence of the desire for accommodation with Colombia, since Larrea, unlike the previous envoy, José Villa, was a pro-Bolivarian; it was said that his one desire was to please the Liberator.

Although the treaty itself did not go into geographical details, mentioning specifically only that the demarcation should start from the mouth of the Tumbes River, the intent of the Peruvian negotiator and of the Foreign Office at the time became perfectly clear in the discussions surrounding the ratification of the treaty by the Peruvian Congress in October 1829. Larrea's idea of the boundary was that it should run from the mouth of the Tumbes diagonally to the river Chinchipe, following that stream to the Marañón and then down the Marañón to the Brazilian frontier, which, like many others, had not been clearly determined. In recommending ratification of the treaty, the Diplomatic Committee of the Peruvian Congress reported that the Tumbes-Chinchipe-Marañón line would give Peru clear and easily defended frontiers and leave Peru with the larger and better portions of Jaén and Mainas, ceding only the capital of the former and "a few little mission villages" on the left bank of the

Marañón. This report illustrates the ignorance of geography then prevailing since the city of Jaén would not have passed to Colombia if the Chinchipe line had been adopted. 1)

Had Ecuador not withdrawn from Colombia in May 1830 it is possible that further steps would have been taken to implement the Treaty of Guayaquil. As it was, the power relationship was reversed, with Ecuador in an inferior position, and the fact that Ecuador's first diplomats were poorly informed allowed the Peruvians to slip out of obligations they had been willing to assume vis-à-vis Gran Colombia.

5. The Pedemonte-Mosquera Protocol. It is possible that too much importance has been attached to this instrument. If genuine, it indicates that Foreign Minister Pedemonte was sticking to the same position as that adopted by Larrea the previous year - a position accepted by the Peruvian Congress. It also clearly indicates that Pedemonte and Mosquera had not been able to reach agreement on the disposition of Jaén, as evidenced by the disagreement as to whether the Huancabamba or the Chinchipe should be the dividing line. Instead of setting a new date for convening the boundary commission, as might have been expected in a "protocol of execution," it simply provided that Mosquera would consult his government in an effort to break the deadlock. Mosquera evidently found the situation so changed by the separation of Ecuador on his return to Bogotá that he did not even hand a copy of his memorandum or agreed minute to the Foreign Minister, nor was this document ever considered by the congress of either Peru or Colombia. It appears to represent the status of the negotiation at the time of Mosquera's departure for Colombia, but it lacks many characteristics of a completed international agreement.

In 1907, at a time when Colombia was again attempting to determine its boundary with Peru in the upper Amazon basin, the Colombian Foreign Office instructed its representative in Lima to take issue with a statement of the Peruvian Foreign Minister, Dr. Solón Polo, that the Pedemonte-Mosquera protocol was "false and non-existent";

1. Basadre, Historia, 6th edition, Vol. I, p. 345.

Colombia had "always" regarded it as one of the most important agreements of old Colombia and as a binding international agreement. 1) The Colombians never explained, however, how it happened that Mosquera had carried this important agreement around for 40 years without revealing it to his government.

Ecuador thus entered upon its life as an independent state with all its land boundaries undetermined. The effort to get its frontier lines fixed occupied the attention of the Ecuadorean Foreign Ministry sporadically during the 19th century and reached a climax when Peru in 1941 resorted to arms to get this irksome matter settled. For Ecuador, the failure to implement the Treaty of Guayaquil was a tragedy of major proportions.

1. Pérez Concha, Ensayo, 1st Edition, Vol. I, pp. 321-323.

Chapter II

BILATERAL ATTEMPTS AT SETTLEMENT

The Pando-Noboa Treaty of 1832

The period following the achievement of independence was one of great instability and turmoil among the countries of South America's west coast. National boundaries were not fixed and few states had as yet achieved any degree of institutional solidity. Peruvian forces attempted to invade Bolivia, and Marshal Andrés Santa Cruz of Bolivia retaliated by forming the Bolivian-Peruvian Confederation, of which he took the title of Protector. Portions of the Cauca valley decided to secede from Colombia, now named Nueva Granada, and join Ecuador, and Ecuador's first war was against its sister nation to the north, ending with Ecuador's surrendering its claim to the Cauca valley. The first President of Ecuador was General J. J. Flores, Venezuelan by birth whom some Ecuadorians suspected cared little about the territorial integrity of his adopted country.

Involved as he was in a major dispute with Nueva Granada, Flores was eager to secure his rear by concluding a treaty of Friendship and Alliance with Peru. To this end he despatched as Minister to Lima one Diego Noboa, who was, as has been said, ignorant of the negotiations carried on by General Mosquera in Lima. Noboa arrived in Lima in October 1831 and immediately experienced the change of climate brought about by the separation of Ecuador from its larger partner. It was not until February 1832 that the Peruvian chancery indicated a willingness to discuss a possible treaty, and in June raised questions about the propriety of concluding agreements with Ecuador since its relations with the other parts of Gran Colombia had not yet been determined. Once Noboa convinced Foreign Minister Pando that treaties of Friendship and Alliance were regarded as legitimate so long as no formerly Colombian territory was alienated, a treaty was concluded on July 12, 1832, which stated as regards boundaries simply that "until an agreement fixing the boundaries is concluded, the present ones will be recognized and respected." 1)

1. Pérez Concha, Ensayo, 2nd Edition, Vol. I, pp. 87-88.

The effect, if any, of this treaty is subject to contradictory interpretations by the two sides. Ecuadorians claim that the clause quoted above confirmed the decisions reached in the Treaty of Guayaquil and subsequent negotiations. In any case, Ecuadoreans affirm that, although the treaty was ratified by their Congress, ratifications were never exchanged; hence the treaty had no legal character and never entered into force. 1)

The Peruvian view is 180 degrees apart. As regards the treaty of Guayaquil, a passage is quoted from a note sent by Noboa to the Peruvian Foreign Ministry on June 18, 1832, in which he was discussing the right of Ecuador to conclude an international agreement apart from the other states of Gran Colombia. He said the compact of union had been dissolved and, that being the case, "could any one claim that the agreements she (Colombia) made could still have any force and effect...?" Noboa then went on to indicate that such agreements might be valid if they were confirmed by the new states. In Peruvian eyes, this indicated that Ecuador had cast aside all previous agreements, including the Treaty of Guayaquil. The Peruvians also assert that the ratifications of the Pando-Noboa treaty were exchanged on December 27, 1832, through the Ecuadorean Consul in Lima in the absence of the Minister. 2)

In this instance the Peruvian argument does not seem fully convincing. It is necessary to wrench Noboa's sentence out of its context in order to have it apply to the Treaty of Guayaquil. Since the dates set for the meeting of the boundary commission had long past, a new agreement would clearly be required to implement the earlier one. Further, the abrogation of a treaty would require a more formal action than Noboa's note, which was, as has been said, not addressed specifically to that subject. However, Ecuador's case would have been much stronger if Noboa had referred to the Treaty of Guayaquil as governing the future settlement of the boundary question.

1. Villacrés Moscoso, Historia diplomática, Vol. II, p. 69.

2. Santamaría de Paredes, Question of Boundaries, pp. 247-248.

The Dispute Warms Up

Whether or not the Pando-Noboa Treaty of 1832 ever entered into full force and effect, its immediate result was to put the boundary question on ice for a full decade. During this period other topics of internal and external affairs occupied the attention of the Ecuadorean and Peruvian governments. Chile twice invaded Peru to force the dissolution of the Peru-Bolivia Confederation, succeeding the second time. Both Peru and Ecuador were torn by civil wars. Although the Peruvian government changed frequently, Ecuador remained from 1830 to 1845 under the presidency of General Juan José Flores, who did not hesitate to use assassination as a political instrument; at one time (1835) resentment against his rule reached such a peak that a convention of his political opponents decreed the extinction of Ecuador and petitioned for admission into Nueva Granada (Colombia).

Friction over the unsettled boundaries might have remained longer in abeyance had it not been for the intrigues of Marshal Andrés Santa Cruz, who, following the collapse of the Confederation, had taken asylum in Ecuador whence he plotted the reconquest of his former domain. As hostilities loomed between Bolivia and Peru in 1841, the latter sent Matias León as Minister to Quito to induce Ecuador to remain neutral.

There for, the first time the Ecuadorean Foreign Minister, José Félix Valdivieso, publicly demanded the return to Ecuador of Jaén and Mainas. León replied that since he had opened his eyes Mainas had been part of the Viceroyalty of Peru by virtue of the Cedula of 1802, and he also invoked the principle of self-determination of peoples, pointing out that those areas had joined Peru when it became independent. The Ecuadoreans in turn called for implementation of the Treaty of Guayaquil, and, when news came of the Peruvian defeat at Ingavi, Valdivieso threatened to occupy the territory by force, whereupon León broke off the negotiations and returned to Lima. 1)

1. Basadre, Historia, 6th edition, Vol. II, pp. 248-250.

In contrast, Ecuadorean historians state that, in conversation with President Flores in the presence of the Colombian Minister, Dr. Rufino Cuervo, León had agreed to return the two disputed provinces to Ecuador but, when Dr. Cuervo drew up draft articles expressing this concession, León refused to agree and denied that he had ever yielded on this point. The Ecuadorean conclusion is that León was simply stalling for time and that the Peruvian government was not negotiating in good faith. 1)

In an attempt to take advantage of their momentarily advantageous position, the Ecuadorean government sent Bernardo Daste to Lima in March 1842 and renewed its demand for the return of Jaén and Mainas, but the Peruvian Foreign Minister refused even to discuss the matter, so Daste returned to Ecuador after only a month or so in the City of the Kings. His mission is only memorable because it resulted in the first publication by El Comercio in Lima of the full text of the Cedula of 1802, heretofore scarcely known, and in a public polemic, the first of many, regarding the rights of each country in the disputed area. This was the beginning of the bitterness which has so clouded relations between the neighboring states since that time. 2)

Peru Resorts To Force

The first attempt to solve the boundary dispute by arms had its origin in the question of the British debt, a problem which had plagued Ecuador since independence. During the Wars of Liberation, the struggling colonies had borrowed substantial sums of money from private citizens in Great Britain, France and other European countries, and once independence was achieved, the question of payment on these bonds, already in default, immediately came up. Ecuador, as one of the successor states to Gran Colombia, had to assume its share, but the chaotic state of its finances had made any agreement on resuming payments impossible.

1. Villacrés Moscoso, Historia diplomática, Vol. II, pp. 257-259.

2. Basadre, Historia, 6th ed., Vol. II, pp. 252-253.

In September 1857, however, the Ecuadorean government signed an agreement with representatives of the bond holders (the Icaza-Pritchett agreement) by which Ecuador promised to turn over large tracts of public lands in partial settlement of its obligations. One of the areas to be turned over centered around the town of Canelos east of Puyo on the headwaters of the Bobonaza River, a tributary of the Pastaza. This proposed settlement drew immediate protests from the United States, Chile, Colombia and, naturally, most vigorously of all, from Peru.

Peru in 1857 was not the disorganized land it had been in the 1830's and early '40's. After a kaleidoscopic interchange of military caudillos and an occasional civilian, Marshal Ramón Castilla had become president and, in the words of the distinguished Peruvian historian, Jorge Basadre, had "put Peru on its feet." 1) He knew the country in detail and even had experience in the great hinterland between Brazil and Peru. In 1851 Brazil and Peru had agreed on a boundary in the upper Amazon, and in 1853 Peru had begun to organize the territory governmentally by setting up the Department of Loreto, whose boundaries were to be those set forth in the Cedula of 1802. Ecuador had of course reserved its rights but took no other steps to establish footholds in the disputed territory. From this time on, Ecuador's position became steadily weaker as Peru gradually increased its control over the region drained by the Marañón.

The Peruvian diplomatic representative in Quito in 1857 was Juan Celestino Caveró, whose task was complicated by the support being given by Castilla to General Flores, who since his overthrow in 1845 had spared no efforts to regain his former position. Caveró got into protocolary difficulties with the Ecuadorean government at the start and his notes to the Foreign Minister were so rude that the Minister finally refused to have any further dealings with him and returned his notes unopened. The Quito government requested that Caveró be recalled, which his government refused; but Caveró finally left in disgust when the Ecuadorean Foreign Office cut off

1. Basadre, Historia, 3rd edition, Vol. I, p. 213.

all contact with him. In October 1858 the Peruvian Congress authorized the government to use any means including war to obtain satisfaction from Ecuador for these "insults" to its representative, and the government declared a "pacific blockade" of all Ecuadorean ports.

Faced with this international crisis, Ecuador dissolved into anarchy, with, at various times, three governments striving to gain control. On November 25, 1859, Castilla landed 6000 men near Guayaquil and occupied the heights of Mapasingue which dominated the city. He forced the Ecuadorean faction led by General Guillermo Franco, who controlled Guayaquil, to sign a convention under which Franco undertook to receive Caverio, open his rejected communications and salute the Peruvian flag. This having been achieved, Castilla proceeded to dictate a treaty of peace, known as the Treaty of Mapasingue, signed January 25, 1860, in which Ecuador recognized the full extent of Peruvian territorial claims as set forth in the Cedula of 1802; in February the Peruvian army returned to El Callao.

The signature of the Treaty of Mapasingue was certainly a severe humiliation for Ecuador, even though the "government" which signed it was de facto and controlled only a portion of the national territory. But Ecuador at this time was in even greater danger: Peruvian agents in Colombia were conspiring with our old friend, General Tomas C. Mosquera, at the time governor of Cauca province, to declare the Cauca Valley independent of Colombia and annex the northern portion of Ecuador while Peru would absorb Guayaquil and the southern provinces. While this scheme seems too fantastic ever to have succeeded, it might have alarmed President Garcia Moreno to the point where, a little later, he seriously offered to make Ecuador a protectorate of the French Empire of Napoleon III.

Fortunately for Ecuador, the Treaty of Mapasingue had no continuing legal effect. The government of Franco was overthrown by Garcia Moreno on September 24, 1860, and the treaty was cancelled by the Ecuadorean National Assembly in 1861; in an act at once generous and realistic the Peruvian Congress took the same step in 1863.

The Garcia-Herrera Treaty - 1890

In the period from 1860 to 1875 Gabriel Garcia Moreno dominated Ecuadorean politics, serving twice as president

and ruling with dictatorial firmness. Under his pro-clerical regime the Jesuits were readmitted to Ecuador and resumed the work of education for which they are noted, both in the settled portions of the country and in the Oriente, the scene of their missionary efforts in colonial times.

Except for relatively minor and low-key disagreements with Peru over boundary questions, such as protests against Peruvian explorations in the area claimed by Ecuador, the issue was little agitated. This was due in part to the war between Peru and Chile on one hand and Spain on the other, arising from Spanish efforts to collect debts alleged to be due them. Spanish naval attacks on Peru began in 1864, and at first Ecuador allowed Spanish naval vessels to be reprovisioned at Guayaquil, a move bitterly resented by the Peruvians. However, in January 1866 Ecuador joined Peru, Bolivia and Chile in an alliance against Spain which resulted in an era of good relations between the neighboring states.

The War of the Pacific (1879-1884) between Chile on one side and Bolivia and Peru on the other seemingly offered Ecuador an unusual opportunity for pressing its case against Peru for the settlement of the boundary dispute, and the Chileans were not slow in proposing such cooperation. However, for reasons not entirely clear, Ecuador did not take advantage of this situation but rather offered to mediate between the belligerents, an initiative which bore no fruit. Subsequent generations of Ecuadoreans have regretted this benevolence towards Peru which, they feel, has not been reciprocated.

With Peru militarily crushed and a prey to internal chaos, another serious effort was made to reach a solution to the long-standing controversy with Ecuador. With the Peruvian plenipotentiary in Quito, Emilio Bonifaz, the Ecuadorean Foreign Minister, Modesto Espinoza, concluded on August 1, 1887, a convention by which they agreed to submit their boundary question to the arbitration of the King of Spain but at the same time to endeavor to solve the pending problems bilaterally in whole or in part, in which case the King was to limit his arbitration to the points, if any, on which no agreement had been reached. The course of the arbitration will be taken up in the next chapter; first the bilateral aspects of the negotiation must be reviewed since they revealed significant changes in the positions of both states.

In fact, neither Ecuador nor Peru were particularly eager to pursue their cases before the Spanish monarch although both submitted the initial briefs. Both were conscious of the fact that the Espinoza-Bonifaz convention had not specified the scope of the arbiter's authority; the convention preamble simply said that both countries wished to terminate in a friendly fashion the question of boundaries pending between them. The Ecuadoreans feared that Peru's superior prestige as the seat of a former Viceroyalty and the region which had maintained its allegiance to Spain the longest would enjoy an advantage over Ecuador, the site of the first revolution against Spanish authority. Ecuador, they realized, was virtually unknown in Europe, whereas the Peruvian ruling families had over the years maintained their connections with Spanish aristocratic circles.

On the other hand, Dr. Arturo García Salazar, Bonifaz' successor in Ecuador, stated that "the only possible, radical and permanent solution to the boundary question between Peru and Ecuador was, has been and will be a direct settlement: everyone who has dealt with the problem has believed this, and anyone who considers the nature of the problem will believe it also." 1) Furthermore, the Peruvian diplomats were looking forward to 1894, when according to their peace treaty with Chile, a plebiscite should be held to determine the disposition of Tacna and Arica; it seemed advisable to get Peru's northern boundary settled, if possible, before that date. 2)

With both sides in agreement it was decided to request the King of Spain to defer action under the arbitration convention while the two countries endeavored to work out a solution bilaterally. His Majesty was pleased, in December of 1888, to grant the request, especially since two other cases involving Latin American countries were already pending his decision. Negotiations were therefore undertaken by Dr. García and the Ecuadorean

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1. Pérez Concha, Ensayo, 3rd edition, Vol. I, p. 208.
 2. Basadre, Historia, 6th edition, Vol. IX, p. 275 ff.

boundary expert, Dr. Pablo Herrera, which resulted in the signature of the treaty which bears their names on May 2, 1890.

In this treaty Ecuador abandoned the purely juridical defense of its claims and adopted a policy of friendly compromise. The boundary which emerged left Tumbes and Jaén in Peruvian hands as they had been since independence. The line gave Ecuador the north bank of the Marañón between the mouth of the river Chinchipe and the Pastaza and then followed the Pastaza northward to its confluence with the Pinches. From that point the boundary moved in a generally easterly direction until it reached the Putumayo, which it followed downstream to the boundary between Peru and Brazil.

The general intent was to leave to each country those settled portions which had traditionally been under its jurisdiction and, in the Oriente, roughly to divide the territory in half. Ecuador would have retained a foothold on the Marañón in its navigable portion between the Manseriche rapids (the Pongo de Manseriche) and the Pastaza and an ample stretch of the Putumayo down almost to its junction with the Amazon (see map following page 36).

It was, in fact, a distinct compromise of the extreme claims of both countries and as such has been harshly condemned by nationalistic writers like Dr. Pio Jaramillo Alvarado and Dr. Jorge W. Villacrés Moscoso. The Chilean envoy in Quito at the time attributed the compromise to the Ecuadorean government's urgent desire to eliminate the constant danger of a conflict with a powerful and tenacious neighbor, plus the fear that an eventual arbitral decision by the King of Spain would be even less favorable to Ecuador. It is also likely that Dr. Herrera, who was thoroughly familiar with the documents in the case, may have doubted that Ecuador's legal claims were strongly based. One of the Deputies who participated in the congressional debate on ratification said later that Dr. Herrera had told the congress: "We do not have a single document to put up against the many Peru possesses to demonstrate that the Royal Cedula of 1802 was accepted and carried out." 1) Similar doubts may well have afflicted

1/ Pérez Concha, Ensayo, 3rd edition, Vol. I, pp. 214-215.

other Ecuadorean statemen as time went on, but until 1942 no one dared face the wrath of his fellow countrymen who had been taught from childhood that Ecuador's rights in the Oriente were unquestionable.

Despite the extent of Ecuador's concessions, its congress ratified the treaty on June 18, 1890. However, the Peruvian congress the following year withheld its approval and asked the executive to renegotiate the treaty so that the lower reaches of the Morona and the Pastaza would remain in Peruvian territory. Ecuador would apparently touch the Marañón only briefly at the Pongo de Manseriche - a non-navigable portion of the stream. Ecuador refused to accept this alteration, and its congress in 1894 revoked its ratification of the treaty.

With exceptional foresight an Ecuadorean, Dr. Constantino Fernández, wrote in 1894, "The Legislative Body of Peru has rejected the treaty with the pretext of modifying it...because, casting their avaricious gaze at the crest of our eastern Cordillera, it has the firm intention of extending its dominion to that point.... Peru knows what it is doing, seeking truces and gaining time.... If we should let a year or more pass without limiting or solving the controversy, we will be left without a foot of land in the Oriente." 1)

A side effect of the García-Herrera treaty was to bring Colombia onto the scene. Colombia protested the signature of the treaty on the grounds that it disposed of territory between the Putumayo and the Caquetá which Colombia claimed and that therefore Colombia should have been included in the negotiation. At first both Peru and Ecuador denied that Colombia had any common boundary with Peru, but the failure of the García-Herrera treaty to achieve ratification caused both parties to reconsider. Since the bilateral negotiations provided for in Article VII of the Bonifaz-Espinoza Convention had proved fruitless, attention returned to the possibility of arbitration by the King of Spain.

1. Pérez Concha, Ensayo, 3rd Edition, Vol. I, pp. 215-216.

At Colombia's suggestion, an Additional Convention was signed in Lima on December 15, 1894, admitting Colombia to the arbitration which would now be designed to determine the boundaries between Colombia, Ecuador and Peru and which would be based on equity as well as law. However, the attitude of the Colombian negotiators caused the Ecuadoreans to fear that Colombia and Peru together would squeeze Ecuador out of the Oriente entirely, basing their claims on being successors to the former Viceroyalties of which the Audiencia of Quito had been a subordinate part. Consequently, although Peru and Colombia both ratified the Additional Convention, Ecuador did not; shortly thereafter the Peruvian Foreign Ministry apparently had second thoughts and requested the Congress to revoke its approval of the agreement, which it did (1895).

With the advantage of hindsight it seems clear that Ecuador's only hope of making its claims against Peru prevail lay in cooperation with a larger power. Colombia's claims were based on the same documents as Ecuador's; hence cooperation with Colombia would appear to have been to Ecuador's advantage. Ecuadorean diplomacy pursued this objective fitfully, but its failure to secure firm Colombian backing was to prove disastrous to Ecuador's cause. Similarly, Ecuador was never able to utilize to its own advantage the hostility between Peru and Chile over the Tacna-Arica question though that problem continued to be agitated until 1929.

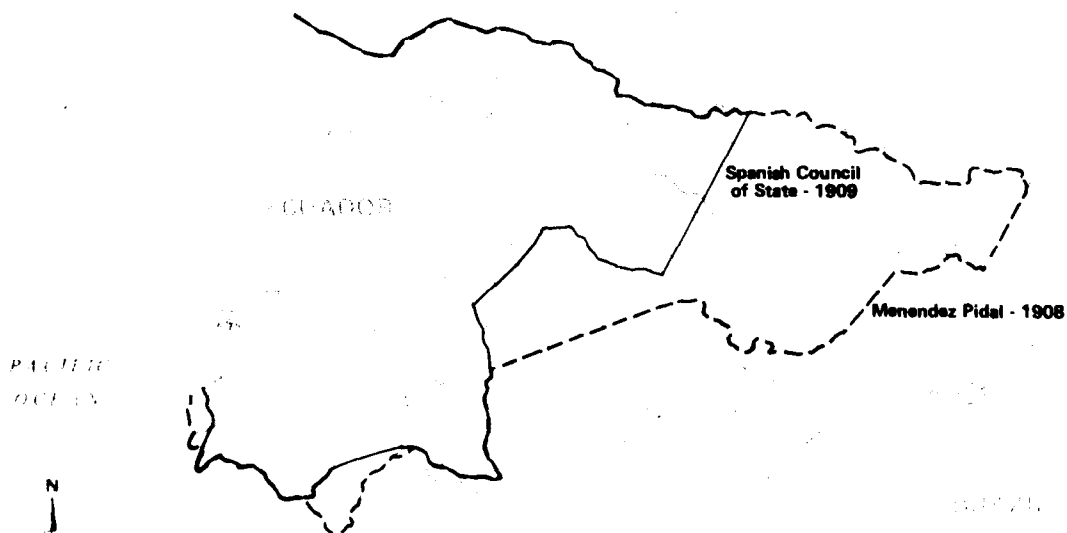
THE PEDEMONTE-MOSQUERA PROTOCOL LINE - 1830



THE GARCIA-HERRERA LINE



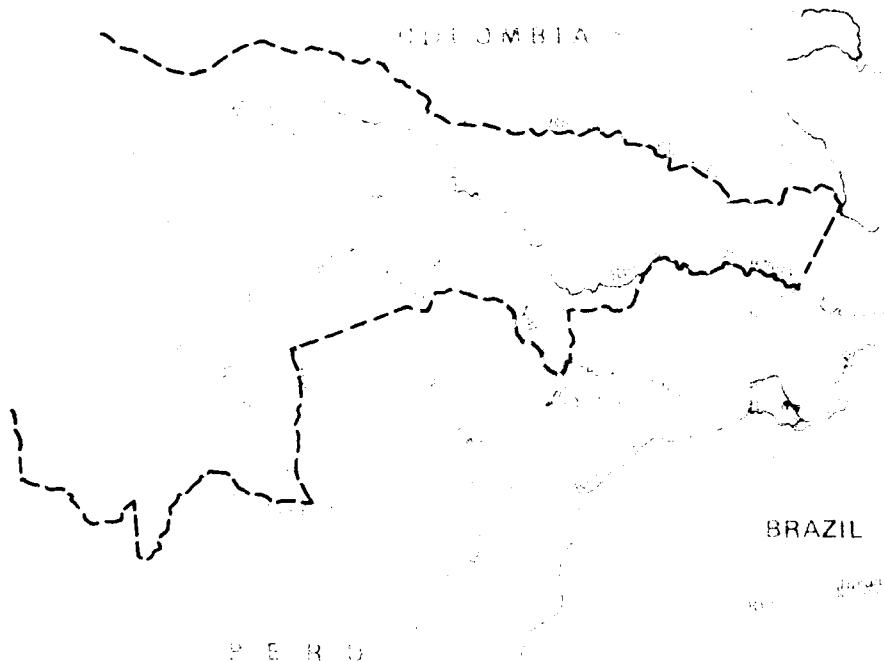
**THE MENENDEZ PIDAL LINE - 1908,
and THE SPANISH COUNCIL OF STATE LINE - 1909**



**THE STATUS QUO LINE
and THE RIO DE JANEIRO**



THE GARCIA-HERRERA LINE - 1890

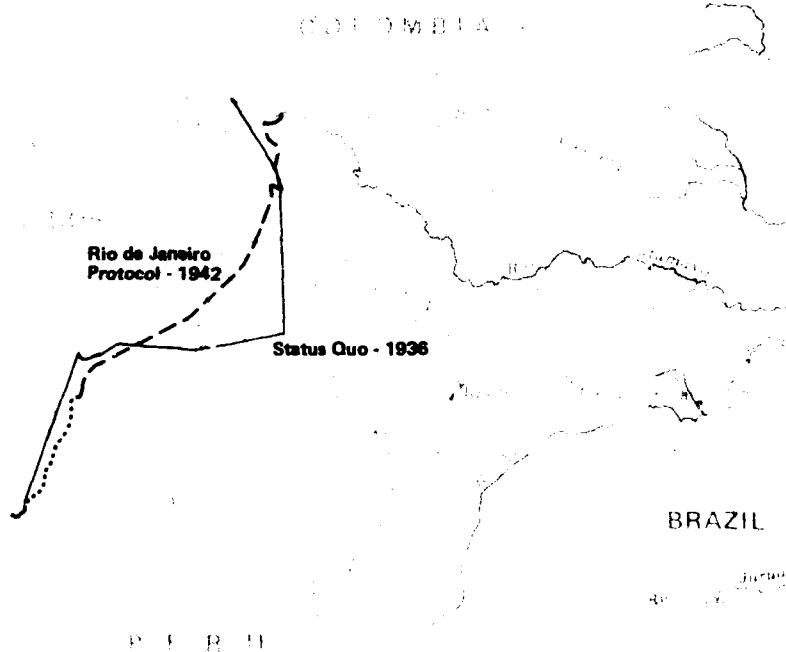


PROPOSED ECUADOR - PERU BOUNDARIES

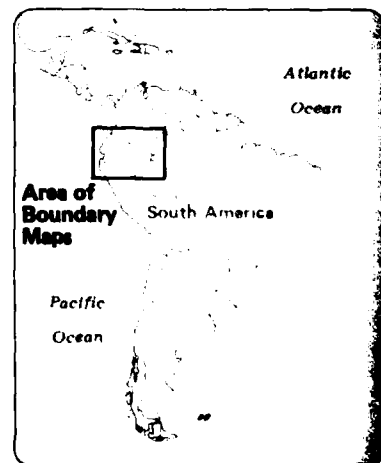
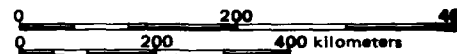
Sources:

Pérez Concha, Jorge. *Ensayo histórico-crítico de las relaciones diplomáticas del Ecuador con los Estados limítrofes*. 2d. and 3rd editions. Guayaquil, 1966.
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THE STATUS QUO LINE - 1936, and THE RIO DE JANEIRO PROTOCOL LINE - 1942



Boundary Maps,
scale, 1:10,000,000



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Chapter III

ARBITRATION AND MEDIATION

The Spanish Arbitration

In the Bonifaz-Espinoza treaty of 1887 Ecuador and Peru had agreed to submit their boundary problem to the arbitration of the King of Spain, but, as noted above, the operation of this agreement was suspended while the parties attempted to reach a partial or complete settlement through bilateral negotiations. Although the bilateral negotiations had substantially ended with the non-ratification of the García-Herrera treaty, President Eloy Alfaro of Ecuador, who ended 35 years of Conservative party rule by coup d'état in 1895, was a bitter opponent of arbitration by the King of Spain, whose advisors he considered prejudiced against Ecuador. Consequently no steps toward reviving the arbitration were taken during his presidency.

However, during the administration of his successor, General Leonidas Plaza (1901-1905), a series of incidents took place which caused a switch in Ecuadorean policy. For one thing, in June 1903 and June 1904 clashes between Ecuadorean and Peruvian frontier patrols took place in the Oriente for which each side blamed the other; this demonstrated the need for demarcating the boundary. Further, in 1904, Ecuador, through its legation in Lima, finally succeeded in obtaining from the Colombian Minister there a certified copy of the Pedemonte-Mosquera protocol, which the Ecuadorean Foreign Ministry thought would have a decisive effect in strengthening Ecuador's case before the arbiter.

Peru also was desirous of ending its dispute with Ecuador, since the Tacna-Arica problem with Chile remained its primary concern. In August 1903 the Peruvian Foreign Minister proposed to the Ecuadorean representative in Lima, Augusto Aguirre Aparicio, that the two sides should secretly agree on a boundary line, which decision would be conveyed to the arbiter who would then issue it as his own. This plan would, it was thought, ease the pressure of public opinion on both governments since they would be obligated to accept the arbiter's decision.

To further this proposal Peru sent as its minister in Quito, Dr. Mariano H. Cornejo, who, in addition to being a skilled diplomat, was also a personal friend of the Ecuadorean Foreign Minister Miguel Valverde. According to Ecuadorean sources, the Peruvian offered to drop the claim to Quijos and Mainas if Ecuador would give up its designs on Tumbes, Jaén and Iquitos. As a means for conveying this idea to the Royal Arbiter, it was decided to request the King to send a commissioner to both countries to study the documentation so as to have exact information and "appreciate the lofty interests involved in the controversy." This agreement was formalized in the Valverde-Cornejo Protocol signed in Quito on February 19, 1904; nothing was put in the protocol about the proposed terms of settlement since these were to appear to be the spontaneous decision of the arbiter based on the report of his commissioner. 1)

The ratification of the Valverde-Cornejo protocol encountered considerable opposition in the Ecuadorean Congress and the public from those who either doubted that Ecuador's case was sufficiently well-documented or who questioned the impartiality of the Spanish King; ex-President Alfaro maintained his strong opposition. In the course of the debates the outline of the verbal agreement between Valverde and Cornejo leaked out, and when this was published in Lima, the public outcry there too was violent. However, the agreements were eventually approved, and the first portion of the scheme went smoothly; the King appointed Dr. Ramón Menéndez Pidal as his commissioner, and Dr. Menéndez arrived in Quito in January, 1905.

His first task was to smooth over the difficulties arising from the clashes of armed patrols in the Oriente in 1903 and 1904. This he accomplished by persuading the parties to sign an agreement under which Ecuador withdrew its forces in the Oriente to Quito while Peru withdrew its to Iquitos. Thus at one stroke Ecuador's precarious footholds east of the Andes were virtually wiped out, while Peru, established at Iquitos and other

1. Pérez Concha, Ensayo, 3rd Edition, Vol. 1, pp. 227-229.

locations on the Marañón, was able gradually to increase the area under its control; Ecuadoreans claim, at least, that Peru did not observe this agreement. 1)

However, when Valverde and Cornejo met privately with Menéndez to discuss the boundary problem, Cornejo denied flatly that any prior agreement for surrendering Quijos and Mainas had been reached; he said that if any hint like that had been made, it had been his own idea and did not represent the policy of his government. Writing about the matter later Cornejo said that such a proposal could only have originated in the mind of Miguel Valverde, and that any Peruvian who made such an offer would obviously be out of his mind. In his report to his government, Menéndez Pidal left undecided the question whether Cornejo's supposed proposal was a trick to get Ecuador to accept an arbitration which it feared, but he did note that Cornejo was a member of the political party of former President Piérola, which took the most extreme position in defense of Peru's territorial aspirations. He seemed to doubt that Cornejo would have made such enormous concessions but left open the question of how Valverde could have imagined that he had done so. 2)

This incident did much to embitter relations between Peru and Ecuador since most Ecuadoreans are convinced that Cornejo tricked his friend Valverde into accepting an agreement on false pretenses, and they have tended to interpret all Peruvian proposals in this light ever since. Back in January 1905 Valverde had no option but to go on with the arbitration, which he insisted should be strictly de jure.

Another result of Menéndez Pidal's visit to Quito was the signature by the Ecuadorean and Peruvian plenipotentiaries for the arbitration of a note dated February 6, 1905, requesting Menéndez to indicate to the King that their respective nations considered it just that His Majesty, within the framework of arbitration, should also establish the compensations which would make the

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1. Tobar, Invasión peruana, p. 51.
 2. Pérez Concha, Ensayo, 3rd Edition, Vol. I, pp. 242-243.

award more correct and facilitate its execution. 1) The motives behind this supplementary agreement are obscure; the agreement is not even mentioned by the two most recent Ecuadorean historians of the boundary question, but it was of considerable importance since it had the effect of permitting the introduction of a degree of equity into an arbitration which, according to Article I of the Bonifaz-Espinoza Convention, was to have been strictly based on law, a point on which the unhappy Valverde had but recently insisted.

Thereafter Menéndez proceeded to review the documents in Quito and Lima, reportedly finding those in Quito "poor and disorganized," and returned to Spain in June 1905 accompanied by the commissioners of the parties to the arbitration: Dr. Honorato Vázquez and Dr. Remigio Crespo Toral for Ecuador and Felipe de Osma and Dr. Mariano H. Cornejo for Peru.

The hope of the signers of the Valverde-Cornejo protocol had been to avoid agitating public opinion. This hope had already been frustrated by the publicity surrounding the debates in the Ecuadorean Congress, and as the arbitration proceeded slowly step by step, public tension increased on both sides.

The first step was a report to the King by Commissioner Menéndez Pidal. Menéndez recommended a compromise line which had no basis in law but which gave Ecuador extensive footage on the Marañón: like the García-Herrera Treaty, it allotted to Ecuador the Marañón line from the Chinchipe to the Pastaza. Thereafter it followed the Pastaza northward but instead of cutting across to the Putumayo, it followed the Napo down to the Amazon east of Iquitos and followed that river for a short distance before turning north-easterly until it encountered the Putumayo, which it followed to the Brazilian border. (See map after p. 36.) For all he had found the Ecuadorean documentation deficient, Menéndez had been more generous with Ecuador than anyone since 1830, and his proposal became the line of

1. Litigio de Límites entre el Ecuador y el Perú, Madrid, 1910. Published by the Legation of Ecuador, p. 12.

preference for Ecuador as a fall-back from the Pedemonte-Mosquera line, which was generally recognized as unobtainable.

Meanwhile, proceeding in a different channel, the Spanish King appointed a Study Commission, which was to review the cases presented by the representatives of the contenders and recommend to the Council of State an appropriate solution. The Commission worked in an atmosphere of intrigue which resulted in news of its activities constantly being leaked to the interested parties. Both sides endeavored to influence the Commission in various ways: both Ecuador and Peru employed several European international lawyers to write opinions favorable to their positions. Peru, moreover, played on the Spanish fear of issuing an award which would be disregarded. They stated that Peru would not recognize any award which attempted to take away territories which, for a hundred years, had been Peruvian, and they drove the point home by saying, "...an award which does not recognize the reality of things or the current of events, superior to human inconsistency, would not change the real situation and would only give rise to international complications." 1)

The opinion of the Study Commission was completed in February 1908. It was far more favorable to Peru than Menéndez Pidal's proposed boundary: it left Ecuador only the section of the Marañón between the rivers Santiago and Pastaza, and cut off the extension to the east he had proposed. Apparently this supposedly confidential report was immediately known to both sides.

Now the impatient parties had to await the decision of the Council of State, which in turn referred the question to its Permanent Commission. The Commission made two reports in the Spring of 1909, both of which were sent back for amendments by the Council. Finally, in its June 14 meeting the Council adopted the third report, which recommended the same boundary as the Study Commission, giving Ecuador an outlet on the Marañón between the Santiago and the Pastaza. (See map following p. 36.)

1. Villacrés Moscoso, Historia diplomática, Vol. III, pp. 340-341.

In desperation the Ecuadorean Minister in Madrid obtained an interview with the Foreign Secretary, Juan Pérez Caballero, who told him: "The natural limits of the Ecuadorean nation are in the eastern Cordillera (of the Andes). Why not be content with being the Switzerland of America?" 1) Dr. Vázquez, the senior Ecuadorean commissioner for the arbitration, even secured an audience with the King, to whom he pointed out the iniquitous nature of the proposed award and appealed to his sense of justice. 2) The cabinet resented Vázquez raising the issue with the King, but nevertheless a few days after the audience, the Foreign Secretary announced that the government had decided to have a panel of ministers hear oral arguments from each of the parties separately.

Borrowing from the Peruvians' tactics, Vázquez told the panel that the proposed award contained defects which would result in its nullity should it be issued by the King; in other words, Ecuador would not obey the award. 3) Furthermore he denounced the "wretched course this arbitration has taken, confused by miserable trickery and degraded from its original level of honesty." 4) It is unlikely that these remarks created a more favorable atmosphere for the consideration of Ecuador's claim.

Besides the parties immediately involved, other West Coast countries felt their interests to be seriously affected. Mention has already been made of Chile's pro-Ecuador sentiments due to her dispute with Peru over Tacna and Arica; in the first months of 1910 relations between Chile and Peru were approaching the breaking point; in fact, diplomatic relations were severed in March of that year.

1. Pérez Concha, Ensayo, 3rd Edition, Vol. I, p. 309 places this quip of Pérez Caballero in a conversation with the Chilean Minister, Federico Puga Borne in January, 1910.

2. Pérez Concha, Ensayo, 3rd Edition, Vol. I. p. 309.

3. Pérez Concha, Ensayo, 1st Edition, Vol. I. p. 343.

4. Pérez Concha, Ensayo, 3rd Edition, Vol. I. p. 310.

Colombia's interest was far more intimately involved since that country was sporadically attempting to settle its frontiers with both Ecuador and Peru. During the first decade of the 20th century, Colombia and Ecuador signed a number of agreements, but all failed to enter into force for one reason or another. The most pertinent of these to the situation in 1910 was the Peralta-Uribe treaty, signed in Quito on May 13, 1910. In it the two neighbors agreed to bend every effort to persuade the King of Spain to recognize the validity of the Treaty of Guayaquil and the Pedemonte-Mosquera Protocol and to ignore any award which was not based on these documents. Colombia and Ecuador would enter negotiations directly with Peru and, should war be necessary to defend the patrimony of Old Colombia, both would contribute equal numbers of troops and make peace only by common consent.

Although this treaty was approved by the Colombian Congress, the Foreign Ministry slyly delayed the exchange of ratifications until the crisis had passed and then notified Ecuador that Colombia no longer intended to perfect the treaty. The effect of this rather tricky move was to leave Ecuador alone facing an ever more powerful Peru, and to free Colombia's hands to make a deal with Peru if advantageous terms could be worked out.

However, in the period now under consideration - early 1910 - Colombia was endeavoring to prevent the issuance of an award which would damage Colombia's legal position vis-à-vis Peru, and war appeared a real possibility. Only a match was needed to ignite the explosive mixture, and that match was tossed by Julio Betancourt, the Colombian Minister in Madrid. Don Julio appears to have been something of a busy-body who enjoyed spreading gossip. He managed to obtain a copy of the draft award approved by the Spanish Council of State and passed it to an Ecuadorean exile opposed to President Alfaro, and this gentleman wired a brief summary to a friend in Guayaquil implying that this was the final document. When the text was published in the press on February 7, the fat was in the fire.

On the Brink of War

The news of the proposed settlement caused a wild outburst of rage among the populace of Ecuador. Mobs surged through the streets and attacked the Peruvian

Consulate in Guayaquil as well as Peruvian owned businesses, and the legation in Quito was also besieged by a mob. Both sides ordered mobilization of their armed forces, and President Alfaro announced that Ecuador had 28,000 soldiers in the barracks plus 20,000 volunteers in part-time training. Opponents of Alfaro were attempting - with some success - to turn sentiment against him, and Alfaro, while trying to keep mass indignation under control, also had to indulge in a good deal of sabre rattling.

Nor was the Peruvian public pleased with the award. The Ecuadorean Legation was attacked and both sides sent troops to the frontier where clashes of small groups were frequent. The Ecuadorean public called on Alfaro to occupy Tumbes by force.

To meet this increasingly dangerous situation President Alfaro moved on two fronts: he instructed Honorato Vázquez in Madrid to request that the issuance of the award be deferred indefinitely, and he proposed to the Peruvian government that bilateral talks be renewed with the idea of limiting the area to be covered by the arbitral award. Dr. Vázquez, for all his protests against the draft award and the manner in which the arbitration had been conducted, opposed requesting deferral, arguing that to prevent issuance of the award would be an act of unprecedented bad faith and that such a "dishonorable action" would offer Peru a moral triumph, that Ecuador would "run the risk of immeasurable dangers in the future."

Nevertheless, after repeated instructions from his Foreign Minister, Vázquez on May 5, 1910, met with the President of the Council of Ministers, Sr. Canaleja y Méndez, and asked that, in view of the recent events in Quito, Guayaquil and Lima, Spain assume the role of mediator so that, once cordial relations were restored, direct negotiations could be undertaken, suspending until the negotiations were completed the issuance of the arbitral award. After some hesitation, Peru joined in a request for postponement to which Ecuador added the condition that the arbitration should not be resumed except at the request of both parties. In the circumstances the Spanish government had little choice but to accede to the request, which it did rather grudgingly on May 18, 1910.

As for resumption of direct negotiations with Peru, this proposal met with a cool reception on the Rimac, where the Foreign Minister had decided to accept the award if it followed the lines of the draft approved by the Council of State. However, he did suggest the possibility of mediation by the United States, and so the stage was set for the first participation of this country in the Ecuador-Peru boundary dispute - a participation which still continues, albeit at a reduced level of visibility, 68 years later.

Tripartite Mediation

U.S. involvement in the controversy was brought about by a joint visit to Secretary of State Philander C. Knox of the Ecuadorean Minister in Washington, Luis Felipe Carbo, and the Peruvian Charge d'Affaires, Manuel Freyre Santander, to ask whether the United States could take action towards an amicable settlement between their two countries. Secretary Knox responded on March 24, 1910, suggesting that the parties send representatives to Washington or some other disinterested capital to discuss the boundary problem under the auspices of the government of that country and, if they were able to find common ground for a settlement, they might then wish to request the King of Spain to withhold his award pending the result of the negotiations. 1)

Although Minister Fox in Quito replied on March 31 that the President of Ecuador had accepted the offer with much pleasure and although Chile warmly supported the U.S. initiative, the matter was allowed to drop for more than a month, presumably to allow an opportunity for the parties to work out an understanding with the authorities in Madrid about the arbitration. The Spaniards were not at all pleased at having the United States involved, the Foreign Minister of Spain reportedly remarking that Spain had been slapped by Ecuador, or Peru, or both, or by the United States. 2) The Peruvians hastened to deny that they had requested U.S. intervention.

1. U.S. Department of State. Foreign Relations of the United States, 1910, pp. 440-441.

2. Pérez Concha, Ensayo, 3rd Edition, Vol. I, p. 330.

During the month of April the situation grew worse. Peru demanded the most humiliating acts of apology for the attacks on its legation and consulate despite the fact that the Ecuadorean government had already expressed its regrets. Ecuador was aflame with patriotic zeal, with different military units vying for the honor of being the first to cross the frontier.

On May 12, 1910, Secretary Knox requested Argentina and Brazil to join in a renewed offer of mediation. Both agreed, and on May 15/17 joint notes were presented in Lima and Quito of which the key paragraph read:

If the Governments of Ecuador and Peru will withdraw their forces from the frontier, suspend mobilization and other measures of preparation for war and await eventualities, then in case no award is made or in case serious difficulties shall subsequently arise, the three governments will undertake a satisfactory solution by mediation. 1)

In making this proposal Mr. Knox cited Article 2, Title 2, of the Hague Convention of 1899, to which both Peru and Ecuador had adhered. It will be noted that the offer of tripartite mediation was contingent on the suspension of war preparations and withdrawal of troops from the frontiers, and on either the non-issuance of an award by the King of Spain or on serious difficulties arising thereafter.

During the course of the mediation, Secretary Knox remained in close touch with the Chilean legation in Washington which had expressed to him Chile's concern at the threat to the peace on the West Coast. He explained that the state of Chilean-Peruvian relations made it impractical to include Chile as one of the mediators, but he made use of Chile's influence in Quito from time to time to secure Ecuadorean cooperation.

The immediate response of the parties in dispute to the tripartite mediation offer was not at all what had been expected in view of their joint request for assistance. Peruvian Foreign Minister, Melitón F. Porras,

1. Foreign Relations 1910, p. 450.

instructed his Charge in Washington to inform the State Department that Peru had not requested U.S. intervention in the dispute and that Peru did not wish to interfere with the King of Spain's award, a statement echoed by Peru's representatives in Madrid. However, on May 20 word was received that the King would defer the issuance of the award, and three days later Porras accepted the offer of mediation without qualification.

On the other hand, Ecuador, which had originally jumped at the offer of mediation as a means of derailing the award, was no longer so eager now that the award was indefinitely delayed. The Ecuadorean note of May 24, 1910, in reply to the formal tripartite offer appears designed to refuse it without actually saying No. The note stated that the Spanish government had advised the monarch to postpone issuing his award to leave the parties at liberty to arrange their difficulties in a direct manner; this proposal had been accepted in such a way as to leave open no other method of solving the dispute than direct settlement. This seemed to close the door on the tripartite mediation. However, the note went on to say that Ecuador accepted the offer of mediation and offered to send commissioners with full powers "relative to a direct settlement" to whichever capital the mediators should designate. The Ecuadorean note also insisted that Colombia should take part in the direct settlement, noting that Colombia and Ecuador were bound by treaties to work together to preserve the boundaries of "Old Colombia" and that Colombia's participation was necessary for the termination of all differences regarding boundaries in the Amazon valley. 1)

Secretary Knox was not put off by Ecuador's equivocation but insisted, together with the other mediators, that the troop withdrawal take place by June 4. One note concluded, "The Government of the United States can see no ground upon which either Peru or Ecuador could justify a failure to do so nor could reconcile it with the recognized dignity and good faith of their intentions." 2) Ecuador agreed to troop withdrawal at once and Peru finally

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1. Foreign Relations, 1910, pp. 458-459.
 2. Foreign Relations, 1910, p. 464.

yielded despite having received intelligence that Ecuador had attached "impossible conditions" to its acceptance of the mediation. The withdrawal was actually ordered before the June 4 deadline, and the immediate threat of war was effectively defused.

Despite the refusal of Peru to undertake bilateral negotiations with Ecuador and Ecuador's insistence on direct talks plus the inclusion of Colombia, Mr. Knox made a further effort to compose the outstanding difficulties by presenting a draft protocol to the parties. The first portion provided for mutual apologies and reparations for the damages inflicted during the riots on public and private property, while the second called for the return of military forces to a peace footing and the maintenance of the status quo awaiting a possible change in the attitude of the Spanish government or until such time as might be fixed by the mediating powers in consultation with Spain. In an effort to bridge the gap between Ecuador and Peru, Knox said mediation might proceed in case the two governments desired to seek a direct agreement through the good offices of the mediating powers. 1)

Peru accepted this proposal but Ecuador refused, insisting on immediate talks without awaiting any Spanish decisions and on the inclusion of Colombia in the discussions. This drew a snappy reply from the Department: on August 10, 1910, our Minister in Quito was instructed to inform the President of Ecuador "forcibly" of the U.S. views on mediation and concluded, "The failure of Ecuador to show a conciliatory disposition...can only be regarded by this government as an evidence of (1) a disinclination to reach a peaceful and honorable solution of the boundary difficulty or, (2) lack of confidence in the mediating powers." 2)

Despite the tremendous pressure from the mediators, President Alfaro felt himself under even greater pressure at home. He was severely criticized for failing to invade

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1. Foreign Relations, 1910, pp. 485-487.
 2. Foreign Relations 1910, p. 495.

Peru and accused of having made a secret pact with President Leguía of Peru. In fact, it is more likely that Alfaro realized far better than the public that Ecuador was not able financially or militarily to take on Peru but that, having withdrawn his troops from the frontiers, he could make no further concessions. In August he and his Foreign Minister, Peralta, took their refusal to sign the protocol to Congress and on September 2 received a vote of confidence in the government's position.

This step effectively ended the attempt at tripartite mediation. On November 24, 1910, the Spanish Foreign Ministry formally informed Ecuador and Peru that the King had withdrawn as arbiter in the boundary dispute. Specifically mentioned as a reason were the terms in which the arbitration had been described in a series of documents published by the Ecuadorean government. 1) Additional though unstated reasons were the affront to Spanish pride in having the United States, Argentina and Brazil come into the case with the implication that if difficulties arose in carrying out the arbitral award, they would undertake to revise it, and the fact that the issuance of the award and its certain rejection by Ecuador could quite probably result in hostilities instead of peace between the disputants.

As a final gesture following the withdrawal from the case of the King of Spain, the would-be mediators in December 1910 proposed that the parties refer their case to the Arbitration Tribunal at the Hague. Peru accepted the proposal, but Ecuador declined, again on grounds that its vital interests were involved and that therefore Article 38 of the Hague Convention would not apply and also because Colombia had not been included. Secretary Knox had had no objection to including Colombia, but Brazil had objected. 2) President Alfaro was overthrown on August 21, 1911, and nothing more was heard of mediation in this period.

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1. Pérez Concha, Ensayo, 3rd Edition, Vol. I, p. 360.
 2. Foreign Relations, 1910, pp. 504-505; 1911, pp. 182-184.

The Situation in 1911 - Summary

The failure of the Spanish arbitration and the tripartite mediation left Ecuador in a distinctly unfavorable position as far as the prosecution of its claims to the upper Amazon basin were concerned. The arbitration had culminated at a time when Peru was having strained relations with Chile and some relatively minor boundary problems with Bolivia. There appeared to be a distinct desire by the Peruvian Government under President Leguia to reach an agreement with Ecuador.

The territorial decision in the draft Spanish award allowed Ecuador access to the Marañón between the Santiago and the Pastaza rivers and clearly went beyond the provisions of the Cedula of 1802. This was similar to the settlement proposed in the García-Herrera treaty which had been rejected by the Peruvian Congress, yet the administration in 1910 expressed willingness to accept it. This proved to be an opportunity for Ecuador which was never repeated. While responsibility for the failure of the mediation was divided, Ecuador was made to appear as the more recalcitrant state, and Peru's acceptance of reference to the Hague Tribunal at the beginning of 1911 seemed to confirm Peruvian reasonableness.

Perhaps even more important in the long run was the virtual destruction of Ecuador's legal case at the hands of the Spanish international lawyers who studied the documents. As Bryce Wood points out, although the award was not officially issued, it became widely known, and it was unlikely that any later mediators or arbiters would retrace the laborious steps of the Spanish experts who had concluded that Peru's legal titles were superior to those of Ecuador. 1)

What were these conclusions? Those set forth in the report of the Study Committee were the most detailed; in subsequent drafts the rationale was altered somewhat but the conclusions were the same:

1. Bryce Wood, Aggression and History, Ann Arbor, 1978, p. 42.

- The Treaty of Guayaquil of September 22, 1829, was ratified and entered into force between Peru and Colombia. Article V provided that the boundaries should be those of the former Viceroyalties. This the committee interpreted to mean the boundaries as they had existed in 1810 for the Presidency of Quito and in 1819 for the Viceroyalty of Peru as determined by the Royal Cédulas or other royal orders in effect at the time. (This threw out the Ecuadorean contention that the word "antiguos" in Article V referred to the Viceroyal boundaries of the 18th century.)

- Any discussions between the negotiators had no binding effect after the entry into force of the treaty. Hence Larrea y Loredó's concession of the Tumbes-Marañón line in his dealings with Gual were not binding on Peru since they were far different from the line which separated the Viceroyalties in colonial times.

- The boundary allegedly agreed upon by Pedemonte and Mosquera on August 11, 1830, as a protocol of execution of the Treaty of Guayaquil bore no relation to any boundaries of the former Viceroyalties; the exchanges of territory proposed in the protocol were very extensive and not small, as provided for in Article V of that treaty. Had the protocol been carried out, it would have been a new agreement and would have required ratification by the congresses and exchange of ratifications. Since this did not happen, the protocol was without force or effect.

- Furthermore, the Pedemonte-Mosquera Protocol was dated on August 11, 1830; Ecuador had separated from Colombia in May of that year; therefore Ecuador could not claim any rights under it. The later draft adopted by the full Council of State simply stated that the protocol "lacked sufficient authenticity."

- By official note of January 18, 1832, Diego Noboa, the first minister of independent Ecuador to Peru, informed Foreign Minister José María Pando that the treaties concluded between Peru and Colombia were not binding on either Peru or Ecuador. In view of this note, the committee held that Ecuador could not invoke against Peru any of the provisions of treaties between Peru and Colombia.

- On July 12, 1832, Pando and Noboa signed a treaty in which Article XIV stated, "Until a convention regarding the settlement of boundaries is concluded, the present ones will be recognized and respected." This treaty was approved by both congresses and ratifications were exchanged through the Ecuadorean consul in Lima on December 27, 1832. The Council concluded that the treaty had entered into effect despite the absence of a formal document recording the exchange, which it regarded as an unnecessary formality. The statement that present boundaries would be respected pending the conclusion of a convention meant that the treaty of 1829 had been superseded since the 1832 treaty established a different procedure. In accordance with the 1832 agreement, the actual possessions of the parties as of that date became the most important principle in determining the boundary. Hence, Jaén and Mainas should be part of Peru; the Study Committee added that Guayaquil, Macas and Quijos should belong to Ecuador; while the final draft did not repeat this statement, it was followed in drawing the recommended boundary.

- The problem was thus reduced (said the Council's final draft) to determining the boundaries of Jaén and Mainas. For this purpose the provisions of the Cedula of 1802 had to be considered. Although the cedula's validity had been impugned, the Council considered it proven that it had been complied with, that the transfer to the Viceroyalty of Peru was territorial and not merely of certain administrative functions, and that it had not been revoked by any subsequent governmental orders despite errors in maps and in the Guía de Foresteros. The principle of navigability of rivers was valid, but geographical knowledge was insufficient even in 1909 to permit this to be carried out in detail; consequently imaginary lines connecting known points would have to be used.

- In conclusion, making use of the flexibility granted the arbiter by the note of February 6, 1905, the Council set forth in detail the recommended boundary as originally proposed by the Study or Technical Committee. This gave Ecuador a stretch of the Marañón between the Santiago and the Pastaza; the remainder of the boundary was similar to that established years later in the Rio Protocol of 1942. Like the Rio Protocol, the Spanish Council of State recommended that the two states recognize the right

of free navigation on their common rivers subject to such regulations as might be issued.

The Council vote to accept the final draft, taken on June 14, 1909, was seven in favor to one against. The lone dissenter, Councillor Felipe Sánchez Román, wrote a lengthy opinion in which he took a position 180 degrees apart from that of the majority. He agreed with the Ecuadorean contentions on every point, from the non-effectiveness of the Cedula of 1802 to the validity of the Pedemonte-Mosquera Protocol, and he favored a boundary running down the Marañón all the way to Brazil. 1)

Reading these opinions on both sides leaves one with a strong suspicion of a certain lack of objectivity if not actual prejudice. The majority decided for Peru on every major and almost every minor point, while Dr. Sánchez Román supported Ecuador in every detail. The circumstance that the majority changed its rationale quite substantially from draft to draft without changing the conclusions causes one to wonder whether the conclusion had not preceded the reasoning supposedly leading up to it. In both cases the impression prevails that the argumentation is not wholly convincing and that there are wide gaps in the reasoning.

However, when all is said and done, the fact remains that Peru's legal case had received a strong endorsement. The arguments in favor of the validity and effectiveness of the Cedula of 1802 and against the Pedemonte-Mosquera Protocol were particularly convincing. The fact that the overwhelming majority of the Council of State supported the Peruvian contentions to a large extent, with whatever motives, damaged Ecuador's case and gave Peru considerable

1. All the foregoing statements regarding the draft ruling of the Spanish Council of State are taken from Litigio de límites entre el Ecuador y el Perú. Madrid, 1910. Its publication by the Ecuadorean delegation was due to Sr. Vázquez' desire to publicize Sánchez Román's dissenting views. In a note to his Foreign Ministry Vázquez said he had obtained the documents "with indescribable difficulties". Pérez Concha, Ensayo, 3rd Edition Vol. I, p. 326.

backing for its policy of expanding into the northern tributaries of the Marañón. Ecuador's rejection of the Spanish arbitration and the erosion of its legal case meant that, in the future, Ecuador would be forced to seek a settlement in equity which in turn would depend on inducing Peru to compromise its claims; unfortunately for Ecuador, its ability to obtain such concessions from Peru declined steadily over the years.

CHAPTER IV

THE MIXED FORMULA

Shadow Boxing 1913 - 1920

Efforts to settle the Ecuador-Peru boundary dispute in the years following the crisis of 1910 were largely focused on what was called the "Mixed Formula." This procedural concept proposed that each side set forth its minimum aspirations in the contested area - the smallest amount of territory it could possibly accept. Where the two sides were in agreement, the line could be drawn without further delay; for the area where they differed, the decision would be reached by arbitration. It thus combined the two principal procedures for solution: direct negotiations and arbitration.

This formula was not exactly new and had in fact been proposed by President Alfaro as a device for postponing or eliminating the Spanish arbitration. At that time Peru preferred to have the arbitral award issued and hence took no action on the Ecuadorean initiative. However, on August 8, 1913, the Peruvian Foreign Minister under President Billinghurst, Francisco Tudela, addressed a note to the Ecuadorean Minister in Lima, Dr. Augusto Aguirre Aparicio, in which he suggested using this procedure for arriving at a settlement. Dr. Aguirre carried the proposal back to Quito where it was warmly welcomed by President Leonidas Plaza and Foreign Minister Dillon. However, the fall of Billinghurst (February 1914) brought this hopeful move to naught, and a further Ecuadorean proposal proved equally fruitless because of the expiration of Plaza's term of office at the end of August 1916.

Plaza's successor, Alfredo Baquerizo, brought back Aguirre Aparicio to Ecuador as his Foreign Minister, and sent José Peralta as Minister to Lima. After long years of residence in Lima, Aguirre had become an ardent proponent of reconciliation with Peru, while Peralta, who had been Foreign Minister under Alfaro during the 1910 crisis, was a stout defender of Ecuador's rights as he understood them and an opponent of arbitration. After many fruitless attempts to persuade the Peruvian

Foreign Office to put forward its line of "maximum concession," Peralta wrote to his own Foreign Minister on April 22, 1919, advocating a radical change in policy for Ecuador:

...Our defense against Peru, limited to simple and repeated protests, has been completely sterile and ridiculous.... The action of Peru in Amazonas must be countered by the same methods the invader uses: we must meet advance with advance, colonization with colonization, the establishment of garrisons with the establishment of garrisons.... What Peru wants is time, its most powerful ally, to carry out its usurpation.... And to gain the necessary time they feign a desire for a friendly compromise, but, when the time comes to make it, they withdraw and shut the doors on us.... There remains no other way, then, but colonization and the slow and peaceful reconquest of our territories, preparing ourselves meanwhile to confront situations which may arise and which may require the support of force.... 1)

Whether it lay within Ecuador's power to carry out such a policy is open to question, but there can be no doubt that Ecuador's failure to back up its claims with colonization was to constitute a serious weakness which, in the end, allowed Peru to take over a large proportion of the disputed territory.

Peralta's memorandum was received coolly in the Ecuadorean Foreign Ministry since it constituted a severe criticism of the policy followed by Aguirre during his nearly 15 years as Ecuador's diplomatic representative in Lima. Despite frequent disagreements with Aguirre, Peralta remained at his post a year longer and attempted to negotiate with the Peruvians on the basis of the Mixed Formula. Finally, on April 24, 1920, the Peruvian Foreign Minister, Melitón F. Porras, sent Peralta a note outlining Peru's "maximum concession", which turned out to be the line proposed by Peru's Congress in 1891 when it withheld

1. Pérez Concha, Ensayo, 3rd edition, Vol. I, pp. 381-382.

ratification of the García-Herrera treaty and which cut off Ecuador from the navigable portion of the Marañón.

Neither Aguirre nor Peralta were disposed to accept this line as a basis for negotiation; Aguirre called it a line of maximum pretension rather than of maximum concession. However, he and Peralta could not agree on the contents of the note to be sent in reply, and as a result Peralta resigned on May 9, 1920, and returned to Ecuador where he initiated a violent press campaign against the government and especially against Aguirre, who replied in kind.

The effect was to excite public opinion and render the task of reaching agreement more difficult. Through the Peruvian Legation in Quito Aguirre requested the Peruvians to submit another line, to which the latter responded that the proposed boundary was open for discussion but only after the Ecuadoreans had presented their line "of maximum concession." By this time the administration of President Baquerizo was drawing to a close, and Aguirre suggested deferring further discussion until the new government had taken office.

The Ponce-Castro Oyanguren Protocol

The new Ecuadorean President, José Luis Tamayo (1920-1924) appointed as his Foreign Minister N. Clemente Ponce, a leading authority on the boundary dispute with Peru and a strong proponent - perhaps the author - of the Mixed Formula procedure. After considerable delay due to a number of incidents which stirred up the public on both sides of the border, Ponce proposed that the negotiations be moved to Washington where, if the parties were unable to agree on the boundary, the remaining differences would be submitted to the President of the United States for decision.

Peru at first declined on the ground that it was already engaged in arbitration with Chile in Washington over Tacna and Arica and could not support two teams in the field at once. However, in May 1924, President Leguía sent as his envoy to Quito Enrique Castro Oyanguren with instructions to agree to conversations followed by arbitration in Washington in which it was understood that Peru would present the line of the García-Herrera treaty as modified by the congress while Ecuador would

present the line proposed by the Spanish Royal Commissioner, Menéndez Pidal, in 1908. This line, it will be recalled, gave Ecuador the left bank of the Marañón between the Chinchipe and Pastaza rivers and a large segment of territory north of the Napo.

Ponce and Castro Oyanguren reached agreement in short order and signed the protocol which bears their names on June 21, 1924. In this document it was agreed that:

1. Both governments, after obtaining the consent of the U.S. Government, would send delegations to Washington to negotiate the boundary question and, if they were unable to fix a definite line, they would determine those areas recognized by each party as belonging to the other; the remainder was to be submitted to the arbitral decision of the President of the United States;
2. The resulting agreement would be submitted to the respective congresses for approval;
3. The delegations were to be constituted in Washington immediately after the question submitted for arbitration by Chile and Peru had been resolved; and
4. Without prejudice to that set forth in the preceding articles, the two governments would attempt to facilitate a solution of the controversy. 1)

The omissions from this agreement were in many respects more significant than its contents. Although messages had been going back and forth between Lima and Quito regarding the claims each side would advance, the agreement said nothing about them; thus the future negotiations in Washington were without any agreed limitations on the area under discussion. Moreover, no time limit was placed on the discussions in Washington before unresolved questions would be submitted to the President for decision. The failure to delimit areas is understandable

1. Full text in Pérez Concha, Ensayo, 3rd edition, Vol. I. p. 431. Substantive portion in Villacrés Moscoso, Historia diplomática, Vol. III, pp. 437-438.

since a public outcry in both countries could be expected at the "sacrifices" both were making in surrendering a portion of their maximum aspirations. The absence of a time limit for discussions in Washington is less easy to understand.

As usual, agreement had been reached at the end of a presidential term; in Ecuador, Gonzalo S. Córdova assumed the presidency on August 31, 1924; Dr. Córdova was not enthusiastic about the Ponce-Castro Oyanguren agreement, which had been the object of a violent campaign in which former Foreign Minister and envoy in Peru José Peralta played a leading part. Consequently there was no follow-up during Córdova's administration, which in any case lasted less than a year.

After Córdova was overthrown by a military revolt on July 9, 1925, the country was ruled by a junta until April of the following year. The junta then named Dr. Isidro Ayora as interim president, and he served as a mild but energetic dictator until 1929, when he was elected president for a four-year term by a Constituent Assembly which he had summoned in October 1928. Both the United States and Peru withheld recognition from the de facto government until mid-1928, thereby making progress on the boundary issue virtually impossible. In fact, much time was to pass before Ecuadorean and Peruvian plenipotentiaries were to meet in Washington. Before taking up this topic, we must look back and consider developments which, while not directly related to the Ecuador-Peru dispute, had a significant bearing on it.

Ecuador-Colombia Boundary Fixed

Mention was previously made of various attempts by Ecuador and Colombia to determine their boundary. In the course of these negotiations, which on several occasions resulted in treaties which were signed but, for one reason or another, never ratified, a compromise agreement had been worked out between Colombian claims to a boundary on the Napo and Ecuadorean claims to the Caquetá. This compromise, placing the boundary on the watershed between the Napo and the Putumayo, was incorporated in the Andrade-Betancourt treaty of 1908 together with an agreement that Colombia would support Ecuador's claims to the rest of the Oriente against Peru. This treaty was not ratified by Ecuador and was succeeded by the Peralta-Uribe treaty of 1910, which spelled out

in greater detail the obligations of mutual support in the light of the crisis of the Spanish arbitration. Colombia delayed exchanging ratifications until the war scare had passed and then declined to do so.

Desirous of removing sources of conflict with at least one of its neighbors and thereby assuring support against Peru, Ecuador reached a definitive solution of its differences with Colombia in the Muñoz Vernaza-Suárez treaty of July 15, 1916. The territorial settlement was the same as that foreshadowed in the Andrade-Betan-court treaty in which the boundary in the Oriente had been fixed at the watershed between the Napo and the Putumayo. However, the Muñoz Vernaza-Suárez treaty failed to incorporate the clauses obligating both countries to act together in defense of their common heritage. It also contained no provision forbidding the cession to a third state of the territory over which Ecuador had renounced its rights in favor of Colombia. The effect of this agreement, then, was not to assure Colombian support for Ecuador's claims in the rest of the upper Amazon but rather to give Colombia every incentive to reach a separate agreement with Peru at Ecuador's expense, and this is precisely what happened.

The Salomón-Lozano Treaty

While Ecuador and Peru were debating procedures under the Mixed Formula, Colombia and Peru were secretly negotiating a settlement of their boundary in the Oriente. The objective of Colombian diplomacy was to achieve an outlet on the Amazon, and this was accomplished by trading to Peru the territory acquired from Ecuador up to the right bank of the Putumayo in return for the Leticia trapezium, an oddly shaped piece of land which included, at its southern tip, the village of Leticia on the Amazon at the Brazilian frontier. The agreement, signed on March 24, 1922, took its name from the Peruvian Minister of Foreign Affairs, Dr. Alberto Salomón, and the Colombian Minister in Lima, Dr. Fabio Lozano; they agreed to keep the agreement secret until submitted to their respective congresses for ratification. The agreement greatly strengthened Peru's position in Amazonas since it now had only to contend with Ecuador.

On their side, the Colombians could scarcely have been more cynical in their treatment of their former ally, Ecuador. On April 1, 1922, the Colombian Foreign

Minister flatly denied to the Ecuadorean envoy that any treaty had been signed; a week later he was compelled to admit that an agreement had been signed but assured the nervous Ecuadoreans that great care had been taken to insure that no part of the treaty would harm the rights of any friendly state. In commenting on this attitude, a Colombian diplomat, Carlos Uribe Echeverri, has written, "The procedure of the Colombian government may be juridically acceptable, but it is not morally honorable." 1)

In deciding to "do in" their smaller neighbor, the Colombian Foreign Ministry seems to have reasoned that Colombia's problems with Peru could be solved relatively easily, while those of Ecuador were complex and involved claims which Peru would never recognize. To tie Colombia to the Pedemonte-Mosquera line would prevent a boundary settlement with Peru and deny Colombia the realization of its ambition for a foothold on the Amazon.

The submission of the Salomón-Lozano treaty to the congresses was delayed due to Brazilian objections that a portion of the boundary of the Leticia trapezium was covered by the Brazilian-Peruvian treaty of 1851; tripartite negotiations were held in Washington beginning in November 1924 under the good offices of the United States. In an agreement signed in Washington on March 4, 1925, Colombia recognized the boundary with Brazil as set forth in the 1851 treaty; Brazil agreed to allow Colombia free navigation on the Amazon, and Peru agreed to recommend ratification of the Salomón-Lozano treaty to its congress. On October 27, 1925, the Salomón-Lozano treaty was ratified by the Colombian Congress, and for the first time its full text became known in Ecuador. Shocked and mortified, Ecuador broke diplomatic relations with Colombia. They were not resumed until 1931.

On another front Ecuador lost a source of potential diplomatic support. On June 3, 1929, Chile and Peru signed the treaty which ended their long controversy over Tacna and Arica. Chile's desire to use Ecuador to distract Peruvian attention from its principal foreign

1. Germán Cavelier, La Política Internacional de Colombia, Bogotá, 1959. Vol. III, pp. 152-153.

policy problem was greatly diminished, and although Chile did not entirely abandon its long-standing friendship with Ecuador, Chile's primary interest became the maintenance of peace on the West Coast rather than the furtherance of Ecuador's case.

Still another set-back for Ecuador occurred with the overthrow of President Leguía in August 1930. While Ecuadorean publicists are by no means agreed in attributing good faith to the Peruvian offers to negotiate a settlement, there can be little doubt that Leguía was more flexible in his approach to the boundary problem than subsequent rulers. In December 1927 the long-time Ecuadorean representative in Lima, Augusto Aguirre Aparicio, had urged the Quito Foreign Office to take the opportunity offered by Leguía's willingness to negotiate although Ecuador was then under an unrecognized, de facto government. He cabled, "We must take advantage of the circumstances because there will never again be a man here in the exceptional circumstances of the present President." 1)

Leguía had had the courage to cut the Gordian Knot in Peru's relations with Chile by his agreement to recognize Chilean sovereignty over Arica in return for Chile's disoccupation of Tacna. It is reasonable to suppose - and his past actions tend to bear out this supposition - that he might have been willing to offer a compromise which Ecuador would have been able to accept. Certain it is that the events surrounding the Leticia incident operated to stiffen Peru's position and to diminish Ecuador's chances for a favorable solution.

The Leticia Incident 2)

The Salomón-Lozano treaty was by no means a popular document in Peru although its effect was to give Peru a position in the north as well as in the south of the region in dispute with Ecuador. Opposition ranged from reasons of high geopolitics to purely private interests.

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1. Pérez Concha, Ensayo, 3rd edition, Vol. I, p. 473.
 2. For a full account of this interesting event, see Bryce Wood, The United States and Latin American Wars 1932-1942. Only those aspects relating to Ecuador will be touched on here.

The Peruvian government hesitated for two years after Colombia had ratified this document before submitting it to congress in accordance with the tripartite agreement signed in Washington on March 4, 1925.

The geopolitical opposition stemmed from the fact that the cession of the trapezium to Colombia meant that Peruvian river traffic would have to pass between a Colombian fort at Leticia and a Brazilian fort at Tabatinga on its way to the Atlantic. The private objections came from large landowners whose properties would be transferred to Colombian territory.

After congressional elections in 1927 the Leguía administration felt able to propose ratification of the Salomón-Lozano treaty, and this was accomplished on December 21, 1927. On August 17, 1930, just a few days before the fall of Leguía, the actual transfer of sovereignty - the change of flags - took place. But Colombia was not to remain in uncontested control of its new river port, for on August 31, 1932, a band of Peruvian civilians seized Leticia and raised the Peruvian flag over it. When the Sánchez Cerro government in Peru did nothing to restrain the civilians and as passions on both sides reached a fever pitch, Colombia began moving naval forces around the Caribbean and up the Amazon.

This threat of hostilities between Ecuador's larger neighbors seemed to offer a golden opportunity for Ecuador to press for a settlement of its boundary with Peru as the price of its neutrality. The Ecuadorean Foreign Office was not unaware of this circumstance, and on November 12, 1932, the Ecuadorean Minister in Washington addressed a note to the Secretary of State saying that Ecuador desired a solution of the boundary dispute with Peru. 1) However, Ecuador was in poor condition to pursue its claims: on August 24, 1932, President Isidro Ayora was overthrown by the military, and there followed a period of virtual anarchy for three years in which no president lasted more than nine months and one held office for only four days.

1. Foreign Relations, 1932, Vol. V. pp. 292-294.

Neither of the disputants was eager to have Ecuador involved. Peru knew that any gains made by Ecuador in the Oriente would be at Peru's expense and that any Peruvian concessions would be bitterly opposed at home. The American Ambassador in Lima, Fred Morris Dearing, told the Department:

All Peruvian maps for the past twenty-five years have shown the Ecuadorean frontier to be about 20 kilometers east of Riobamba and Latacunga and only 40 kilometers east of Quito. The Peruvian public in general has been so accustomed to this boundary line that they have assumed that it is a definite and uncontested one, and the realization that Ecuador claims immense territories on the Paute, Pastaza and Napo comes as a shock to almost all the people of Peru.

Both Colombia and Peru have hitherto treated the Ecuadorean claims lightly and took (sic) the position that as Ecuador was a weak country its pretensions need not be considered seriously. 1)

The Ecuadorean public was of course equally accustomed to maps showing Ecuadorean territory as spreading east from the Andes in a great triangle with the Marañón on one side and the hills overlooking the Putumayo on the other, and it was impossible for them to regard Peruvian activity in this area as anything but aggression and robbery. Bryce Wood's recent book, Aggression and History, demonstrates clearly how these fundamentally differing concepts of the national domain so clouded the views of statesmen and public alike as to render any voluntary agreement virtually impossible.

With possibly one exception Colombia too was not keen for Ecuador's involvement in the Leticia affair. Internally, Ecuador was in disarray; it would probably be a military liability if push came to shove; and in addition the Colombians probably understood that their problem with Peru was a relatively simple one involving the execution of a treaty unquestionably in force and

1. Foreign Relations, 1932, Vol. V. pp. 363-364.

that adding Ecuador's claims would complicate the situation past hope of solution.

The one exception to Colombia's arms-length attitude towards Ecuador came at the end of March 1933 after the Colombian Amazonian expedition had recaptured the towns of Tarapacá and Güepí on the Putumayo which had been occupied by Peruvian troops. On March 29 and again the following day the Colombian Foreign Minister, Urdaneta Arbeláez, asked the Ecuadorean Minister in Bogotá whether, if Colombian troops dislodged the Peruvian forces from Pantoja, a village in the sector claimed by Ecuador, the Ecuadorean government would be prepared to take possession of the place; Urdaneta assured the Minister that Colombia had no desire to expand its own territory but would be willing to help Ecuador recover what rightfully belonged to it. He added that, should Peru as a result attack the coastal regions of Ecuador, Colombia would participate in the defense.

The Colombian proposal was taken seriously in Quito, and the Foreign Ministry consulted with various groups of politicians and intellectuals concerned with international affairs. The debates were hot but in the end the great majority advised that Ecuador should maintain its neutrality. The prevailing view apparently was that Ecuador was economically depressed and practically disarmed and that in these circumstances Ecuador might well become a battleground between the two larger countries. There was also the consideration that Colombia had let Ecuador down in 1859 and 1910, and that, once the Leticia matter was settled, Colombia would abandon Ecuador to possible Peruvian reprisals. 1)

In due course the Leticia incident was settled through mediation by Brazil and the League of Nations; Brazilian mediation was strongly supported by the United States, which also suggested that Ecuador be included. This proposal reportedly made President Sánchez Cerro "furious", 2)

1. Villacrés Moscoso, Historia diplomática, Vol. IV, pp. 19-20; Pérez Concha, Ensayo, 3rd edition, Vol. I. pp. 552-554.

2. Foreign Relations, 1933, Vol IV. p. 401.

and resulted in a good deal of resentment against the United States. In the end, Peru turned Leticia over to a League of Nations force which, after a year, gave it back to the Colombians.

The whole affair had proved a deep humiliation for the Peruvian military. The poor state of communications, the unpreparedness of the army and the navy, and the pressure exerted by the international community left an indelible mark on the consciousness of the Peruvian military, who were the government at this period. They resolved not to be caught unprepared a second time and commenced strengthening the military forces in men and equipment. Communications were improved and military aviation built up. When the next crisis in Peruvian-Ecuadorean relations occurred, there would be little disposition to compromise and even less to back down.

The Washington Talks

As part of a move to keep Ecuador out of the Leticia negotiations which were getting underway in Rio de Janeiro, the Peruvian Foreign Minister, Dr. Solón Polo, on October 18, 1933, addressed a note to Dr. Homero Viteri Lafronte, Ecuadorean Minister in Lima, proposing the immediate initiation of direct conversations on the boundary problems to be held in Lima. It so happened that on the day preceding the Peruvian note, the Ecuadorean Congress had impeached the President; Ecuadorean disarray is illustrated by the fact that, between August 16 and October 30, 1933, no less than 12 persons were in charge of the Foreign Ministry at different times, some as Ministers and others as acting-in-charge. 1) On October 29 Dr. José Gabriel Navarro was appointed Foreign Minister by Acting President Abelardo Montalvo and by November 21 a reply had been prepared to the Peruvian proposal, agreeing to the holding of direct talks but suggesting that these be held in Washington in accordance with the Ponce-Castro Oyanguren protocol.

1. Pérez Concha, Ensayo, 3rd edition, Vol. I. p. 591 footnote, quoting Carlos Arroyo del Río, En Plena Voragine.

Dr. Polo shied away from transferring the negotiations because, he said, the State Department attached little importance to affairs of that sort; however, agreement was finally reached that direct talks would commence at once in Lima as provided in Article IV of the Ponce-Castro Oyanguren protocol, while at the same time the approval of the United States government would be requested for eventual negotiations in Washington. The Ecuadorean and Peruvian diplomatic representatives presented identic notes to this effect to the Department on January 31, 1934, and on February 6 President Roosevelt personally received the diplomats to announce his acceptance of the responsibilities conferred on him by the protocol. 2)

It is at about this point that a distinct alteration in Peruvian policy begins to be apparent - a distinct hardening of the attitude and a resort to rather obvious devices to delay indefinitely a settlement of the Ecuadorean boundary problem on any but purely Peruvian terms. It is customary for nationalistic Ecuadorean writers to contend that Peru never negotiated in good faith, and that, confident that time was on Peru's side, the objective was always to evade any reasonable settlement until Peru had occupied and colonized the entire disputed region.

It would be difficult to deny that at times such policies motivated Peruvian actions, but at other times, there seems to have been a desire to reach a decision based on a compromise - naturally a compromise as favorable to Peru as possible. The government of the day appears genuinely to have urged the congress to approve the Garcia-Herrera treaty in 1891, and later, during the administrations of Billinghurst and Leguía, Peruvian proposals for settlement seem to have been sincere. Time and again hopeful beginnings were aborted by internal political upheavals in one country or the other, and even constitutional changes of government frequently resulted in delays while the new executives were becoming acquainted with the true inwardness of the situation. With the advantage of hindsight it is clear that Ecuador missed several chances to settle the problem on terms far more favorable than those imposed on it in 1942, notably at the time of the Spanish arbitration in 1910.

2. Foreign Relations 1934, Vol. IV, pp. 460-463.

By 1934 the situation had changed. The military in Peru had taken power openly, first under Sánchez Cerro and after his assassination under General Oscar Benavides. The Leticia affair had shown up the weakness of the Peruvian military and naval forces; Peru had been humiliated and subjected to great international pressure, especially from the United States, which was bitterly resented. The determination to take out its frustration on Ecuador is apparent from the deliberate stalling of negotiations until overwhelming military superiority had been achieved and resort to force became feasible.

Peru's determination not to submit to arbitration despite the provisions of the Ponce-Castro Oyanguren protocol has been frankly admitted by Dr. Alberto Ulloa, a leading authority on the boundary question and sometime Foreign Minister. Writing in 1942 Dr. Ulloa said:

After the decision of President Coolidge in the question of Tacna and Arica, which Peruvian opinion correctly considered contrary to justice and historical truth, there had occurred in this country a change in the understanding of the better line of international policy on boundary problems. A solution by arbitration was no longer desired, considering that it would always be influenced by reasons of policy, especially when entrusted to a Chief of State, and that the arbiters, for those reasons or for others of greater ease and lesser responsibility, would seek a compromise solution. In direct negotiations, it was thought, there would be no obligatory compulsion which would compel the country morally and legally to accept an unjust award. 1)

From 1934 to 1936 Peru refused either to negotiate in good faith with the Ecuadorean special delegation sent to Lima or to agree to transfer the talks to Washington. The Ecuadoreans complained that Dr. Polo had first agreed to present a line for discussion and then refused to do so. Nor was the position of the Ecuadorean delegation in Lima aided by public statements by President-elect José María Velasco Ibarra that he would rather

1. Alberto Ulloa, Perú y Ecuador: Última etapa del problema de límites. Lima, 1942. pp. 114-115.

cut off his hand than agree to any boundary not based on the Treaty of Guayaquil of 1829. From August 13, 1934, to November 11, 1935, the Ecuadoreans said they had been unable to secure a single meeting with the Peruvians; on the latter date the special delegation was withdrawn.

In December 1935 Dr. Viteri proposed moving the talks to Washington; in March 1936 Peru rejected this proposal on the ground that it was necessary first to determine the character of the arbitration to which the question would be submitted. Ecuador requested the United States to put pressure on Peru to come to Washington as agreed in the Ponce-Castro Oyanguren protocol. The reply over President Roosevelt's signature and dated June 8, 1936, was important as stating the policy which the US was to follow throughout the entire ensuing period: it said that to put pressure on either party, however mild, would appear to prejudice the impartiality of the arbitration the President might be called upon to undertake under the terms of the protocol; consequently the President declined to use his good offices to persuade Peru to come to Washington. 1)

The position stated by President Roosevelt, which represented a policy of Sumner Welles to which the latter adhered meticulously throughout the extended period of talks, was unquestionably correct from a juridical point of view. However, it doomed the negotiations to failure since Peru had no desire to reach a compromise solution and would only have done so had considerable pressure been applied. Conscious of Peruvian sensitiveness over US persuasion during the Leticia crisis, Welles was unwilling to play any part at all in the negotiation; it may have been this attitude which caused some Ecuadoreans to believe that Welles secretly favored Peru throughout the period culminating in the 1942 Rio Protocol.

Peru was determined at all costs to avoid any third-party intervention in its controversy with Ecuador. Alfonso López, President of Colombia, proposed to visit Ecuador and Peru in 1936 and expressed the hope that

1. Foreign Relations 1936, Vol. V, pp. 108-113.

he might assist in arranging a settlement between those two countries. Peru was thus placed in an embarrassing position since it could scarcely decline the offer of so distinguished a personage. By an erroneous press report President López was given the impression that Ecuador and Peru were carrying on separate negotiations behind his back, and he thereupon cancelled his trip. Both Pérez Concha and Villacrés Moscoso credit Peru with causing the cancellation and putting the blame on Ecuador. In any case, in reporting the frustrated trip to congress, the Peruvian Foreign Minister, Dr. Alberto Ulloa, clearly expressed Peru's determination to maintain the bilateral character of the dispute. 1)

However, another circumstance later impelled Peru to agree to transfer the negotiations to Washington as urged by Ecuador in accordance with the Ponce-Castro Oyanguren protocol. In January 1936 President Roosevelt had issued a call for a special inter-American conference on the maintenance of peace, and this was scheduled to be held late in the year in Buenos Aires. Ecuador planned to use this occasion to ventilate its frustration at Peru's delaying tactics, with results for Peru which could surpass President López' mediation in potential embarrassment. In these circumstances, the Ecuadorean Minister in Lima, Homero Viteri Lafronte and Peruvian Foreign Minister Alberto Ulloa were able to reach agreement and sign on July 6, 1936, a document known as the Act of Lima. Its principal points were:

1. The arbitration provided for in Article One of the Ponce-Castro Oyanguren protocol would be de jure. This definition would be incorporated in the minutes of the initial meeting of the delegations.
2. Three delegates from each country would meet in Washington on September 30.
3. Peru and Ecuador would maintain the status quo of their present territorial positions until the termination of the negotiations in Washington and of

1. Pérez Concha, Ensayo, 3rd edition, Vol. I, pp. 679-687. Villacrés Moscoso, Historia diplomática, Vol. IV, pp. 70-74.

the arbitral procedure without implying recognition by either party of the rights of the other to the territory held at present. 1)

While Peru would have preferred to avoid going to Washington at all, this agreement represented a considerable concession by Ecuador. A serious flaw, from the Ecuadorean point of view, was that the arbitration was to be in law rather than in law and equity, which Ecuador had usually insisted on. As we have seen, Ecuador's legal titles were questionable; further, by opening up the discussion to arguments about the effectiveness of the Cedula of 1802, the validity of the treaty of 1829 and the existence of the Pedemonte-Mosquera protocol, the negotiation could be dragged out interminably.

An even more serious fault in the agreement was its failure to indicate which territories were currently occupied by each state. It has been suggested that the Ecuadoreans did not insist on this since it would have revealed that Ecuador had no settlements or forts on the Marañón at all and very few in other parts of the Oriente. Ulloa cleverly took advantage of this obscurity and circulated to all the American governments Peru's definition of the status quo. The line as drawn by the Peruvian Foreign Minister showed the area actually occupied by Ecuador but placed on the Peruvian side of the line all the unoccupied "no-man's land". This permitted Peru to inch forward, as it had been doing for generations, into uninhabited areas without appearing to violate the status quo. Even worse for Ecuador, the status quo line of 1936 came to be considered the de facto boundary between the two countries despite the disclaimer written into the Act of Lima, and future negotiations were to be in terms of variations from this basic line. 2)

Finally, the Act of Lima did not indicate which areas were to be excluded from discussion; it will be

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1. League of Nations Treaty Series, No. 4026. Also in Pérez Concha, Ensayo, 3rd edition, Vol. I, pp. 689-690, and Foreign Relations 1936, pp. 116-117.
 2. Tobar Donoso, Invasión peruana, p. 80; Wood, Aggression and History, p. 50.

recalled that, at the time of the Spanish arbitration, Peru had insisted that areas long and voluntarily incorporated in the Peruvian state, such as Tumbes and Jaén, would in no circumstances be submitted to arbitration. This position had not changed in the interim. In a sense this created a "heads I win, tails you lose" situation, since Peru refused to discuss its rights to certain territories claimed by Ecuador whereas Peru's claims extended almost to the suburbs of Quito.

The meeting in Washington started on schedule and in the presence of President Roosevelt. Despite this auspicious send-off, the talks quickly bogged down without accomplishing anything. The stumbling block was the question of territories incorporated into Peru and their exclusion from consideration. From this obstacle the negotiations soon degenerated into wrangling about petty details: Lawrence Duggan in December 1936 informed Under Secretary Welles that all substantive discussion had been sidetracked for ten days for lack of agreement on drawing up the minutes of the meetings. Peru proposed referring the "preliminary question" to the World Court; this would of course have required years and have been very expensive. Ecuador in turn proposed submitting the whole controversy to President Roosevelt for solution. Privately, the Ecuadorean Foreign Minister told our Minister in Quito in August, 1937, that Ecuador was prepared to limit the area submitted to arbitration to the region between the Pastaza and Morona Rivers - the area which the Peruvian Congress had excluded from the García-Herrera treaty in 1891.

The Peruvian position was made clear to Under Secretary Welles by Peru's Chief Delegate, Dr. Francisco Tudela; he told Welles in February 1938, "This effort (i.e. the Washington talks) has failed because of the presentation by Ecuador of zones for submission to arbitration which involved the existing control by Peru of both banks of the Marañón and the Amazon Rivers, and Peru could not possibly agree to relinquish her existing controls over these rivers." 1)

1. Foreign Relations 1938, Vol. V, p. 220.

It thus became clear that Peru not only would not negotiate or arbitrate regarding areas long under Peruvian jurisdiction, like Tumbes, Jaén and Iquitos, but would insist on excluding Ecuador entirely from any contact with the Marañón and the Amazon. On September 28, 1938, Peru announced that since Ecuador was insisting on going beyond the terms of the Ponce-Castro Oyanguren treaty, the negotiations in Washington were being suspended. The announcement added that this decision had been influenced by the fact that the Ecuadorean government had proposed direct discussions of the boundary issue in Lima and that the Peruvian government had accepted. 1) The Peruvian delegation packed up and left Washington in October in the face of desperate Ecuadorean efforts to save the arbitration.

So ended another in the long series of efforts to solve the Ecuador-Peru boundary problem by peaceful means. Peru had adopted positions which Ecuador could not possibly accept voluntarily as they involved Ecuador's total exclusion from the main portion of the upper Amazon basin. It is interesting but futile to speculate whether a more vigorous effort by the United States would have produced a more constructive result. As early as December 1936 it had been apparent to Lawrence Duggan, Chief of the Division of Latin American Affairs, that some outside, impartial person would have to act as mediator as in the Chaco Peace Conference; such person should not be a U.S. citizen in view of President Roosevelt's role as potential arbiter. 2) This idea was taken up at a later date, but by then Peru had emerged from a potentially sticky situation with its position unimpaired.

And what of the Ecuadorean proposal for direct talks in Lima? This turned out to be the result of a particularly adroit Peruvian gambit. Early in 1938 Peruvian Foreign Minister, Carlos Concha, had intimated to the Ecuadorean Minister in Lima, Gonzalo Zaldumbide, that he would be much more forthcoming than the delegation in Washington if direct talks could be held in Lima. Zaldumbide, together with Foreign Minister Luis Bossano, placed this

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1. Foreign Relations 1938, Vol. V, pp. 227-228.
 2. Foreign Relations 1936. Vol. V, pp. 122-124.

situation before the de facto, Jefe Supremo de la República, General Gil Alberto Enríquez Gallo, who held office from October 1937 to August 1938; Enríquez quickly fell in with the idea of writing a personal letter to President Oscar Benavides suggesting that should the negotiations in Washington fail for any reason, he was investing Zaldumbide with full powers to discuss with Benavides and his Foreign Minister the terms for ending the long controversy. Benavides replied on May 20, 1938, that, in the circumstances foreseen by Enríquez, he would be only too happy to authorize his Foreign Minister to undertake the proposed discussions. Thus the Ecuadoreans fell neatly into the trap and provided the Peruvians with an excellent excuse for breaking off the Washington negotiations. 1)

The exchange of letters between Enríquez and Benavides was only known to three persons on the Ecuadorean side: Enríquez, Bossano and Zaldumbide; Enríquez turned over the reins of authority to Dr. Manuel María Borrero on August 10, 1938, at which time Bossano was replaced by Dr. Julio Tobar Donoso as Foreign Minister. Consequently, when the Peruvians announced their withdrawal from the Washington negotiations, no one in the Quito Foreign Ministry knew about the Enríquez letter, and great was their wrath when the truth came out. Needless to say, the three persons involved have been harshly criticized by their fellow countrymen for what has been considered a colossal blunder, but it is in any case doubtful that the Washington talks could have succeeded without vigorous intervention by a third party.

Further Attempts at Mediation

Hardly had the collapse of the Washington talks become inevitable when the provisional president of Ecuador, Dr. Borrero, cabled President Roosevelt requesting that the powers which had mediated in the Chaco war (Argentina, Brazil, Chile, Uruguay and the U.S.) intervene in the Peru-Ecuador controversy. On October 13, 1938, the Department cabled the other prospective mediators, expressing willingness to be of any possible assistance in solving this problem. Initial reactions were favorable,

1. Villacrés Moscoso, Historia diplomática, Vol. IV, pp. 148-151.

but for reasons not entirely clear Chile quashed the initiative by informing Ecuador, without consulting the others, that it would be prepared to mediate only if requested to do so by the Peruvian government. The other ex-members of the Chaco team felt obliged to make an equivalent reply, but the Department characterized the Chilean reply as "precipitate". 1)

It may be that a golden opportunity was missed to bring collective pressure on Peru, especially since the Eighth Inter-American Conference was about to meet in Lima. As it was although the Ecuadorean delegation led by Dr. Tobar Donoso made several proposals to Peruvian Foreign Minister Concha for settlement procedures, the latter skillfully evaded them while at the same time preventing Ecuador from raising the issue in conference sessions.

The meeting did have one potentially useful outcome for Ecuador: it carried one step further the inter-American procedures to be followed in case of hostilities or threat thereof. The 1936 Buenos Aires Conference had provided that in such case the American States would consult together, and in Lima it was decided that the consultation would be at the level of Foreign Ministers. It was not, however, until the Second Meeting of American Foreign Ministers at Havana in 1940 that the procedures for calling such a consultation were worked out. Nor was Ecuador's position strengthened by the fact that the country had again fallen into a state of governmental disruption. Borrero resigned the provisional presidency on December 1, 1938, and was succeeded by Aurelio Mosquera Narváez, who proceeded to jail most of the members of the Constituent Assembly which had just elected him. This happened while the Eighth Inter-American Conference was in progress in Lima; Ecuador's domestic chaos naturally deprived its delegation at the Conference of much moral prestige.

In the first months of 1939 there appeared the figure of a personage who was to play a dominant role in the Ecuador-Peru dispute for many years to come. From that

1. Foreign Relations 1938. Vol. V, pp. 230-238.

time forward the Brazilian Foreign Minister, Dr. Oswaldo Aranha, was the author of most of the efforts at conciliation and, as it turned out, virtually the sole final arbiter of the dispute. On a visit to Washington Aranha met with Sumner Welles and Homero Viteri who had remained in Washington as Minister on Special Mission after the breakdown of the Washington talks. They decided that Brazil would request Peru to present its line of maximum concession while the United States would make the same request of Ecuador. Both lines would then be transmitted to Brazil which would, without further consultation with the parties, establish the line it considered most equitable. If the parties accepted this line, it would be converted into a formal agreement.

In agreeing to Aranha's proposal on June 29, 1939, the Ecuadorean Foreign Ministry's Advisory Commission determined that Ecuador would present the same line it had presented in Washington - the Menéndez Pidal line which gave Ecuador an outlet on the Marañón as far as the mouth of the Pastaza and another on the Amazon between the mouths of the Napo and the Ambiyacu. For its part, Peru said it would negotiate on the basis of "zones of contact" - presumably roughly the area marked off by the status quo line of 1936. Aranha informed the Ecuadoreans that their proposal was not the line of "maximum concession" for which he had hoped and that it was too complicated, making Ecuador both a Marañón power and an Amazonian power. The Advisory Commission rebelled at this suggestion for greater sacrifices and, contrary to the wishes of Foreign Minister Tobar, instructed him to stand by his first proposal. 1)

It is not known whether Aranha also proposed that the Peruvians modify their position, and as a result many nationalistic Ecuadoreans believe Aranha was prejudiced in favor of Peru from the beginning. It seems more probable, however, that he was endeavoring to work within the bounds of the possible, having in mind Peru's superior position and strength.

1. Villacrés Moscoso, Historia diplomática. Vol. IV, pp. 166-167.

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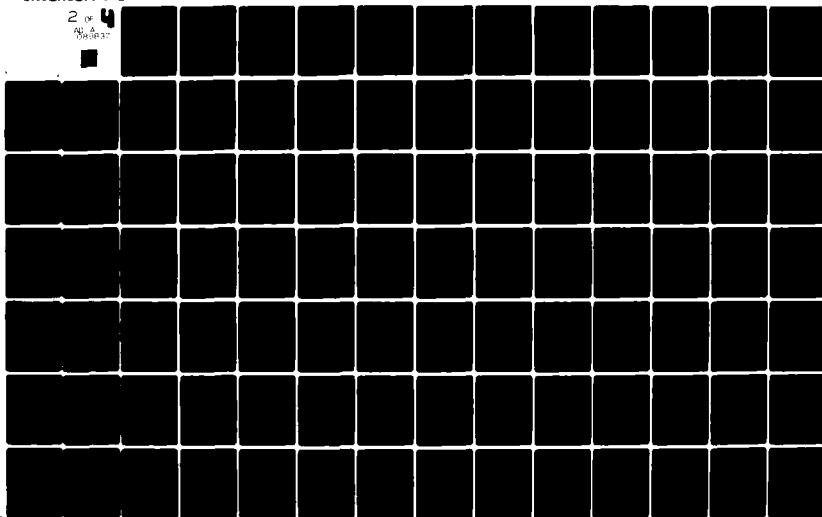
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CHAPTER V

RESORT TO FORCE

The Military Build-up

The years following the Leticia crisis were marked by the determined effort of the Peruvian Government to improve the armament, training and communications of its armed services. That crisis had displayed in painful fashion Peru's military weakness: it took three weeks or more to move lightly armed troops from the centers of population to Iquitos, and all the heavy equipment had to be shipped by water via the Amazon and the Atlantic Ocean.

The Benavides government in 1933 inaugurated a vigorous program of acquiring arms, greatly improved training programs, and increased the size of the army. The army's strength rose from 8000 men in 1933 to over 16,000 in 1941, and artillery, tanks, armored cars and military aviation were procured, mostly by purchase in Europe. A highway was constructed into the Oriente and the roads leading to the Ecuadorean frontier were greatly improved. The Escuela Superior de Guerra (War College) was reorganized and placed under the command of General Eloy G. Ureta, and it was from this body that the plans evolved which were to make the 1941 campaign against Ecuador successful. 1)

Although the Peruvians often charged that Ecuador was arming heavily, the Ecuadoreans in fact did little to increase their military potential. The army remained at approximately 8000 and had few new weapons, no tanks or armored cars and no military aviation worth mentioning. The officer corps was riddled with politics, and both officers and men were poorly trained. Ecuador actually

1. Wood, Aggression and History, pp. 65-66. Dr. Wood's accounts of the crisis and eventual invasion of Ecuador in the work cited and in his earlier The United States and Latin American Wars, 1932-1942 are unsurpassed. I have attempted to include essential developments here as a convenience to the reader, but anyone seriously interested in the situation should refer to Dr. Wood's books.

reduced its military budget by 10% in 1941 and attempted to obtain lend-lease weaponry to the tune of \$30,000,000 from the United States at a time when, because of World War II, no arms were available. 1)

Furthermore, Ecuador's internal situation remained unstable; Carlos Arroyo del Río had become president in 1940 in elections the honesty of which was hotly disputed; he took office on September 1, 1940. He considered his position so precarious that he kept the larger part of the army in Quito and other major cities where it could be ready to repress any popular uprising. It is believed that not more than 2000 troops were on the southern frontier in 1941, facing Peruvian forces several times their size. The Ecuadorean authorities did revert to the 1910 plan and ordered all able bodied men between 18 and 35 to report for Sunday training on January 12, 1941. Some 20,000 gathered in Quito's football stadium where they were given a patriotic speech by the President, but the occasion broke up in an anti-government riot. In the view of Foreign Minister Julio Tobar Donoso, Ecuador appeared to be in a state of dissolution. 2)

Meanwhile troop placement on both sides gave rise to mutually reinforcing anxiety, although naturally Ecuadoreans were more concerned in view of their military inferiority. After the breakdown of the Washington talks Peru began building up its frontier forces in the north, of which the Ecuadorean authorities were kept informed by their consul at Paita. In response the Ecuadorean commander on the frontier, Lt. Col. Segundo B. Ortiz, took it upon himself to occupy an advanced position called Alto Matapalo or Isla Noblecilla without orders from headquarters (July 1939). Although this place was on the western frontier, it happened to be in an area where the proper boundary was in dispute; Peru claimed the Ecuadorean detachment had occupied Peruvian territory in violation of the 1936 status quo line. With considerable effort Foreign Minister Tobar persuaded the General Staff to order the post withdrawn, but Ortiz simply refused

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1. Wood, Aggression and History, pp. 66-68.
 2. Wood, Aggression and History, pp. 78-79.

to carry out his orders since, he said, he considered withdrawal dangerous to the security of Ecuador. In May 1940 another forward outpost was established at Casitas, and in September still another was built at Meseta, also known as Cerro del Caucho, both of which elicited immediate Peruvian protests.

The establishment of these posts in violation of the status quo line as defined by Peru was advanced later as evidence of Ecuadorean "aggression" and "provocation" by Peru and seems to have provided the most substantial casus belli available to Peruvian apologists. The Ecuadorean Foreign Office agreed to withdraw the post at Meseta so that a mixed commission could determine where the boundary line actually ran, but the Ecuadorean military delayed the execution of this order. Finally, Lt. Col. Bolívar Gálvez, successor to the insubordinate Ortiz, reported that the position had no strategic importance, and it was abandoned towards the end of January 1941. After much prodding from the Ecuadorean Foreign Ministry, the Peruvians withdrew forces which had moved into the Zamora region in the Oriente, apparently also without the knowledge of their Foreign Ministry. 1) This tendency of the military to move forward without orders was an evil omen of events to come.

Faced with Ecuadorean delay or refusal to evacuate the recently occupied posts, President Prado of Peru in January 1941 authorized the formation of the Army Group of the North and the reinforcing of the Forest Division at Iquitos. The orders for the Group of the North were drawn up on March 7; they were to restore the de facto frontier, expelling Ecuadorean garrisons at Casitas, Cerro del Caucho and other places. 2)

However, General Ureta, who had been given command of the Group of the North, had considerably more ambitious plans; as he told it in his book written after the invasion, Apuntes sobre una campaña (1941), he believed a

1. Wood, Aggression and History, pp. 69-71. Julio Tobar Donoso, La invasión peruana y el protocolo de Río, antecedentes y explicación histórica. Quito, 1945, pp. 117-122; 132-133.

2. Wood, Aggression and History, p. 76.

situation had been created where Peruvian honor required recourse to arms. Anticipating that the Ecuadoreans would react to the attack on their advanced posts, he planned to launch a "counter-offensive" into Ecuadorean territory. He wrote, "In case of an offensive reaction by the enemy, he should be pushed out of Peruvian territory and, if circumstances are favorable, he should be pursued into his own territory, in order to reach and hold bases of strategic value which would facilitate future operations...." And in another place, "Although the plans contemplated that substantial forces would be required for the conquest of the province of El Oro, it was necessary to study different objectives in Ecuadorean territory, should circumstances be so favorable as to justify taking the offensive." 1)

The foregoing should suffice to make it clear that the decision to initiate armed action and to invade Ecuador did not depend on chance encounters in July 1941 but had been carefully prepared and planned long in advance. Consequently it would be a waste of time to attempt to discover who struck the first blow in July since Peru was prepared to advance with or without any excuse.

Personalities: Julio Tobar Donoso and Manuel Prado Ugarteche

With the powder kegs in position on the Ecuadorean-Peruvian border, the wicks attached and the matches lighted, let us take a moment's respite from events to look briefly at two of the principal actors in this tragic drama: Julio Tobar Donoso, Foreign Minister of Ecuador, and Manuel Prado Ugarteche, President of Peru. These were two very different men.

Tobar was a professional practitioner of international relations. Prior to becoming Foreign Minister in 1938, his principal occupation had been that of legal advisor to the Foreign Ministry and his avocation the writing of history. He was a man of intense religious convictions and, after his period as Foreign Minister, served as the rector of the Catholic University. As he confessed to his former associate, Gonzalo Escudero, in 1942 after

1. Wood, Aggression and History, pp. 76-77 quoting Ureta pp. 67-69.

resigning from the Ministry, he felt that God had entrusted to him the unhappy mission of solving the frontier problem in the conditions imposed by the circumstances in order to safeguard the national existence. That mission had been facilitated, he wrote, by his lack of love for popularity, and that once he had accepted his arduous responsibility, which had given a flavor of tragedy to his life, the subsequent troubles had made no impression in his soul. He concluded saying, "My nerves are shot, and I fear that I will never recover my former energy." 1)

Dr. Tobar wrote the story of his efforts to save as much as possible of Ecuador's Amazonian heritage after leaving public office and when he was the object of public scorn and obloquy. Entitled La invasión peruana y el protocolo de Río, it was inevitably a defense of his policies, yet it was honest in reproducing documentary sources; this book remains a major source on the boundary problem 1938-1942. Perhaps in his darker hours the characterization of Dr. Tobar which Sumner Welles included in his book, The Time for Decision, may have helped to alleviate his depression. Welles wrote with reference to the Third Meeting of American Foreign Ministers at Rio de Janeiro in January 1942:

I have seldom had the privilege of meeting a statesman of greater intellectual integrity than Dr. Tobar Donoso, who was then Ecuador's Minister for Foreign Affairs. A devout Catholic, he impressed me deeply throughout the conference by the sincerity of his devotion to the interests of his own country as he saw them. Never swayed by considerations of his personal popularity at home, he did all that he could to bring about the final solution of the boundary dispute. The solution he sought might not bring with it all that the most clamorous of his fellow countrymen demanded, but it would be inherently equitable and, by bringing peace and stability to the two neighboring countries, would permit his own people to devote themselves to the development of their own great natural resources

1. Villacrés Moscoso, Historia diplomática, Vol. IV, p. 214.

and to the tranquil evolution of their own political life. 1)

Dr. Tobar appears to have appreciated far better than most Ecuadoreans the weakness of his country's true situation and to have tried from the beginning to avoid the contest at arms towards which he believed the Peruvians to be heading. His policy was to avoid providing Peru with a casus belli while at the same time strengthening the armed forces of Ecuador to increase their deterrent power. To postpone the evil day he attempted to compensate for Ecuador's debility by bringing foreign influence to bear on Peru to check its aggressive tendencies.

Events were to prove neither of the courses of action viable: Ecuador had neither the money nor, because of World War II, the opportunity to acquire arms to counter the Peruvian build-up, and as for foreign influence, the inter-American system had not yet been developed to the point where established procedures could be quickly brought into play and the whole moral force of the Western Hemisphere be concentrated on a potential aggressor.

The international situation could hardly have been more favorable for Peru and more unfavorable for Ecuador: with both Europe and the Far East in flames, the attention of American statesmen, particularly those in the United States, had perforce to be focussed on those areas; the entry of the United States into the war after December 7, 1941, was the last straw. And so there clings to the activities of Julio Tobar Donoso the aura of Greek tragedy -- that of a courageous fight against inevitable defeat.

Although Peru seemed to hold the trumps, the position of its president, Manuel Prado, was not an easy one. Prado owed his office largely to the good will of the Peruvian military and especially to Marshal Oscar Benavides, who preceded him in the presidency. It therefore could not be expected that he would attempt vigorously to restrain the military, even had he wished to do so. Moreover, he was under strong psychological compulsion to show no signs of weakness or wavering since his father,

1. Welles, The Time for Decision. New York and London, 1944. p. 416.

Mariano Ignacio Prado, had been president in 1879 when the War of the Pacific with Chile began and had ignominiously fled the country rather than assume responsibility for the debacle he apparently perceived to be impending. At the time when hostilities with Ecuador threatened in 1910, Manuel, then a student, had enlisted as a common soldier and had in two periods of service achieved the rank of lieutenant of cavalry. Clearing the family name was important to him.

An additional constraint on Prado was the fact that Gen. Ureta, in command on the northern front, had political ambitions and at one time is said to have threatened that if his army was not allowed to march north, it would march south. 1) Prado seems to have handled this situation by giving the general no excuse to march south but, at the same time, through the government's control of the press, insuring that press attention would be focused on himself rather than on Ureta. Isaiah Bowman who was in Lima at the time of the invasion, wrote, "At Lima it is Prado who gets all the publicity though the (army) command was frequently referred to....One would think it was Prado who rode down the enemy in the field from the systematic way El Comercio, for example, keeps his name in the headlines." 2) Yet in late May, Ambassador Norweb had described Prado's arguments as "those of a weak man or one very uncertain of his position." 3)

The way the deck was stacked, there was no doubt who would win the game; the interest lies in seeing how the cards were played.

The Sharpening Crisis

As the fateful year 1941 began, Ecuador - or at least the Foreign Ministry - was fully aware of the danger but hopelessly trapped between a jingoistic public opinion constantly fanned by sensational press and radio reports and the threat of Peruvian military might gathering on

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1. Wood, Aggression and History, p. 112 quoting the British Minister in Lima.
 2. Quoted in Wood, Aggression and History, p. 113.
 3. Wood, Aggression and History, p. 86.

the frontier. Several incidents took place which greatly excited public opinion and resulted in serious demands that the Foreign Ministry "do something".

In an effort to diminish the popular outcry, Tobar, perhaps unwisely, attempted to muzzle the press and radio, which only added to resentment against the Minister. He also had scrapes with the Ecuadorean military; the Commander of the Army formally requested the Foreign Office to take more energetic steps such as breaking diplomatic relations with Peru, and the Minister of Defense passed this along to President Arroyo del Río.

Tobar considered that breaking relations would provide the Peruvians with the excuse they were awaiting to attack Ecuador; he said he would never launch Ecuador into a war for which it was totally unprepared and offered the president his resignation. It was refused, but the president seems to have done little of a positive nature to support the beleaguered chancellor. 1) On December 12, 1940, Tobar Donoso sent a confidential message to all the American Republics asking for "every assistance" in creating a commission of conciliation and concluding, "...in its desire to avoid conflict, the Ecuadorean government would be prepared to accept any measure that might be proposed to it and that might have the guarantee of a friendly government." 2)

Sumner Welles was deeply concerned about the situation, which he regarded as very dangerous especially in existing world conditions. He suggested to Foreign Minister Aranha of Brazil that a fresh effort be made to persuade the parties to submit the controversy to some friendly mediation or impartial arbitration, adding that he considered the Brazilian government the best qualified to undertake the task of mediation. 3) This was the most explicit indication to date that Welles wished Brazil to assume the leadership of the inter-American community in dealing with the Ecuador-Peru case; Aranha

1. Villacrés Moscoso, Historia diplomática. Vol. IV, pp. 130-132.

2. Foreign Relations 1941, Vol. VI, p. 212.

3. Foreign Relations 1941, Vol. VI. p. 213.

was not loath to take up the offer, and for many years thereafter Brazil was to be the kingpin in the group of American States involved with the continuing problem.

The ever-hardening Peruvian line was set forth without ambiguity by the ambassador in Washington in a call upon Welles on February 28, 1941, in an obvious though unacknowledged reaction to the Ecuadorean circular of December 12. The ambassador made five points:

1. Peru was not disposed to consider the tender of good offices or offer of mediation by any American Government which was not based on the retention by Peru of territories held for over a century;
2. Peru would not agree to any proposal of arbitration which did not recognize the right of Peru to retain the provinces of Tumbes and Jaén and likewise the provinces of Loreto and Amazonas; (This seems to carry the "Heads I win tails you lose" policy a step farther.)
3. Peru felt that the present moment was not propitious for a settlement of the boundary dispute because of the pressure Ecuador was bringing to bear on Peru and the attendant publicity;
4. Peru suggested that the temporary line of division be based on the military outposts held by both governments;
5. Peru wished to assure the United States that it believed only in a pacific adjustment of the dispute and in no event would resort to force unless attacked by Ecuador.

Welles' reply was couched in equally frank terms. He said he considered the statement to be of a very negative character; the U.S. government regarded the boundary controversy as the most serious element of danger to the peace in the entire Western Hemisphere; it seemed to us in the highest degree necessary that the dispute be settled in an equitable manner and as soon as possible, and he recommended Aranha as the best qualified person to exercise good offices in the dispute. 1)

1. Foreign Relations 1941, Vol. VI, pp. 216-218.

There seems to have been no immediate reaction to the Under Secretary's statement, but it may have reinforced Peru's already strong tendency to consider the U.S. attitude as hostile to Peru. For the time being, in any case, the strong Peruvian opposition headed off any further efforts at collective action.

On April 6, 1941, Dr. Tobar despatched yet another circular to the other American Republics seeking aid for Ecuador's efforts to solve the dispute: "My government would not overlook any juridical method to attain that solution.... As has been repeatedly stated by Ecuador, it is ready to enter into direct arrangements with Peru if it is given guarantees of good faith in the negotiation, to take advantage of the eminently American recourse of arbitration or to accept finally the friendly assistance of other governments...." 1)

Tobar apparently intended to imply by the phrase "if it is given guarantees of good faith in the negotiation" that Ecuador would not resume the futile game of open-ended talks with Peru but would require that a time limit be set on the bilaterals after which both would agree to resort to some specific procedure of peaceful settlement. However, the Peruvian Foreign Ministry, now under the leadership of Dr. Alfredo Solís y Muro, elected to interpret the phrase as a reflection on Peru's honor and filed an energetic protest without delay: "The phraseology used by Your Excellency is inconsistent with the obligations of mutual respect between states," and he regretted that Peru's efforts to institute friendly negotiations had not received a response corresponding to its well-intentioned objective. 2)

Some writers 3) contend that Dr. Tobar's phrase gave Peru the excuse it had been seeking to unleash its attack on Ecuador. It is true that the acrimonious exchange of notes which followed effectively cut off any possibility

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1. Foreign Relations 1941, Vol. VI, p. 219.
 2. Foreign Relations 1941, Vol. VI, p. 221.
 3. e.g. Villacrés Moscoso, Historia diplomática, Vol. IV, p. 244.

of engaging in serious discussions with Ecuador. More men and supplies were being sent to the northern frontier; Tobar's probably exaggerated intelligence reports indicated there were 10,000 Peruvian soldiers facing Ecuador's 2000 or less across the Zarumilla River; his growing apprehensions were well justified.

Tripartite "Friendly Services"

Help of a kind came from an unexpected source. Alarmed by the Peruvian military build-up and perhaps touched by Tobar's circular of April 6, Acting Argentine Foreign Minister Guillermo Rothe took the initiative in proposing that Argentina, Brazil and the United States take steps to try to head off the impending hostilities. On May 8, 1941, the three powers sent notes to both parties offering their "friendly services" in achieving a "prompt, equitable and final settlement of the dispute." 1)

Needless to say, Dr. Tobar accepted the offer at once; he was especially pleased at the reference to "equitable" settlement, since he was convinced that Ecuador's claim in equity was far stronger than in law. The Peruvian reply of May 13 was much less forthcoming; after making it clear that Peru would not permit its sovereignty over Tumbes, Jaén and Mainas to be called in question, Dr. Solís accepted the "good offices" of the three powers.

The acceptance of "good offices" was obviously something quite different from the "friendly services" referred to in the three power notes. The would-be peacemakers had deliberately used a non-technical phrase so as to leave the door open for a wide variety of approaches, while "good offices" would limit their role to bringing the parties together for the bilateral talks the Peruvians had always favored.

The United States decided to ignore the discrepancy between the offer and the acceptance and in a reply of May 20 expressed satisfaction that the two governments had accepted the offer of "friendly services" to achieve

1. Foreign Relations 1941, Vol. VI, pp. 221-222.

a "prompt, equitable and final settlement of the existing boundary dispute"; in fact, the term "friendly services" was repeated twice while "friendly offices" appeared once. The telegram went on to say that it was the intention of the three governments to offer to the disputants in the immediate future suggestions regarding the most practical means to bring about conversations between representatives of the parties in dispute and representatives of the three governments offering their "friendly services". 1)

Nevertheless, the Peruvians had succeeded in driving a wedge between the would-be mediators; in their replies of May 20, 1941, the Brazilian and Argentine messages used the phrase "good offices" and the Argentine omitted the word "prompt" from the phrase "prompt, equitable and final settlement." 2) In any case, Dr. Solís lost no time in making clear the limitations on Peru's acceptance. With reference to the suggestion of a meeting between representatives of the parties and the friendly powers, he pointed out that such a procedure would be inconsistent with good offices and equivalent to mediation, which Peru had not accepted. Furthermore, Peru considered that a meeting at that time on the border problem would renew the tension and produce results exactly the opposite of those desired by the three powers. 3)

In case the Peruvian replies had not been sufficiently clear, the press and official "off the record" comments would have left no doubt. The Ecuadorean Minister in Lima reported that the annoyance caused by the tripartite proposal was clearly revealed in bitter expressions of resentment and anger such as "strange, improper, unheard of and untimely." 4)

With obvious official inspiration a press campaign broke out in which the United States rather than its

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1. Foreign Relations 1941, Vol. VI, p. 228.
 2. Wood, The U.S. and Latin American Wars, pp. 272-273.
 3. Foreign Relations 1941, Vol. VI, pp. 230-231.
 4. Pérez Concha, Ensayo, 2nd ed. Vol. II, p. 92.

two partners was singled out for attack. It was alleged that the United States was offering Ecuador coastguard vessels and aircraft in return for bases in the Galapagos Islands, and even Secretary Hull's categorical denial that bases were under discussion was insufficient to allay the suspicions. 1) The Peruvian press war against the United States was clearly contrived to play on Washington's anxiety to avoid any breach in hemispheric solidarity in the face of the growing menace of the Axis. As Dr. Wood comments, the Peruvian leaders had found that diplomatic ferocity, feigned or real, was a rewarding technique. 2)

Welles was not intimidated by the Peruvian press campaign and informed Aranha he wished to give Peru and Ecuador assurances something was being done. Aranha, however, thought it unwise to push Peru too hard and prepared to search for means of getting direct negotiations between the two parties started again. 3) As a result, the attempted mediation ground to a halt, and the entire month of June was allowed to pass without positive action.

The Shooting Begins

On July 5, 1941, shots were exchanged between Ecuadorian and Peruvian outposts at the towns of Huaquillas and Chacras in the western zone on the river Zarumilla. Both sides accused the other of initiating the action; and the Ecuadoreans charged that Peruvian artillery and aviation went into action. Tobar immediately sent another circular to the American Republics inculcating Peru but strangely not proposing any positive inter-American action such as a meeting of consultation of Foreign Ministers in accordance with Resolution CIX of the Eighth Inter-American Conference held in Lima in December 1938. At the time of this incident two such meetings had already been held, in Panama and Havana, both, however, concerned with the situation arising from the European war rather than with purely inter-American problems. Procedures

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1. Wood, The U.S. and Latin American Wars, pp. 272-273.
 2. U.S. and Latin American Wars, pp. 275-276.
 3. Wood, Aggression and History, p. 84.

for dealing with threats to the peace within the Western Hemisphere were not worked out in practice until after the war.

The outbreak of actual fighting goaded the United States, Argentina and Brazil into belated action, and on July 9 in identic notes they proposed that both sides withdraw their troops 15 kms. behind the 1936 status quo line and offered to send their military attachés and other experts to observe the withdrawal. 1) Somewhat surprisingly the Ecuadoreans took four days to work out their reply. Col. Urrutia, the army commander, argued that his men had held firm and Peru had taken no territory; withdrawal would be taken by the mediators as a sign of weakness and once peace had been restored they would take no interest in working out a basic solution. Tobar on the other hand argued that more time was needed to build up military strength; he seems to have had a better appreciation of the relative strengths of the two armies than Col. Urrutia. 2)

As it finally emerged on July 12 the Ecuadorean reply to the mediators was essentially an agreement but was conditional and involved. The basic thrust was to agree to withdrawal in principle but to insist on an immediate meeting of the parties with the mediators to work out all the details. The Ecuadorean note did, however, accept without quibble the proposal to send neutral observers to the frontier area and urged that this be done as soon as possible. Peru also accepted the withdrawal proposal but rejected the suggestion of neutral observers and conditioned execution on receipt of suitable apologies for the dismounting of the shield over the Peruvian consulate in Guayaquil by youths following a patriotic demonstration.

Meanwhile the mediators were attempting to induce the other American Republics to take common action. Favorable replies were received from all but Chile, which replied on July 12 that it was not necessary to utilize any procedures other than those already available under

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1. Foreign Relations 1941, Vol. VI, pp. 231-232.
 2. Tobar, Invasión, pp. 183-186.

existing inter-American agreements. Apparently the Chilean government was miffed at not having been included in the group of mediators in May; as a leading power of the west coast Chile considered that it should have been consulted. At this stage Peru had indicated opposition to Chile's participating in the discussions. 1)

Before all the ifs, ands and buts could be worked out, serious fighting erupted on July 23. In retrospect the conditioned Ecuadorean reply to the mediators' withdrawal proposal appeared to have been a mistake even to Dr. Tobar. In his book on the invasion he said of the reply, "It did not take into consideration the imminent dangers of the moment." 2)

Apparently appearances could be deceiving. Benjamin Welles, son of the Under Secretary and at the time a reporter for the New York Times, visited the frontier with the assistance of the Ecuadorean Foreign Ministry and reported from Arenillas, Ecuador, on July 18 that the fighting would likely increase unless stopped by Ecuadorean-Peruvian cooperation or by the friendly interest of other American States. However, on July 21 he cabled from Talara, Peru that "the military situation is static and probably will remain so during the informal conversations in Washington.... On opposite sides of the narrow, winding, muddy Zarumilla River the opposing forces are lined up. Each side is ready to fight on the other's crossing, but it is safe to say that neither is seriously planning to cross." Unfortunately, this delayed despatch was printed in the Times on July 23, the day the Peruvian offensive began. 3)

It must be remembered that the events of this period went on against the backdrop of the most intense popular excitement, especially in Ecuador. Patriotic rallies were held repeatedly in the major cities; students, labor unions and learned societies vied with each other in publishing perfervid expressions of defense of Ecuador's

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1. Wood, U.S. and Latin American Wars, p. 279.
 2. Tobar, Invasión, p. 479.
 3. New York Times for dates indicated.

rights and of insults and defiance of Peru. Most of all the Ecuadorean press and radio lost no opportunity to stimulate nationalistic feelings. In contrast with the relative calm of the Peruvian press, Benjamin Welles reported the Quito and Guayaquil press crammed daily with "sensational and imaginative accounts of the 'war'." He said the circulation of El Comercio of Quito had increased from 18,000 to 25,000 as a result of the war news and noted that the press obviously had an interest in stirring up the war spirit. 1) Foreign Minister Tobar also complained that his efforts to calm the situation were being constantly thwarted by the press and radio, and he earned some hard knocks for attempting to have the press and radio throttled.

As in the case of the July 5th exchange of fire there will never be any consensus about who fired the first shot on July 23rd. Different Peruvian writers, while all blaming Ecuador, differ greatly in describing the incident which triggered the Peruvian offensive. The official Peruvian version may be synthesized by saying that "the Ecuadoreans invaded Peruvian territory; we threw them back and invaded Ecuador to teach them a lesson." Bryce Wood is of the opinion that the attacks of July 23 were initiated by General Ureta without any incident of importance. On July 14 the Minister of Defense had instructed Ureta, in view of the "obviously aggressive attitude of Ecuador", to dislodge the Ecuadorean posts established in Peruvian territory since 1936 and to "take advantage of the first opportunity, such as an enemy attack, to proceed...." In his account of the events, General Ureta states that he gave orders to carry out the mission of the Army Group of the North on July 20, hence before the alleged Ecuadorean attacks. 2)

The military phase of the Zarumilla campaign can be disposed of quickly. By the most conservative estimates the Peruvians outnumbered the Ecuadoreans by four to one, and their equipment was incomparably superior. Skillfully using artillery, tanks and aviation they pulverized the Ecuadorean forces in two days. According

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1. New York Times, July 23, 1941.
 2. Wood, Aggression and History, pp. 103-105.

to Tobar, by the night of July 25-26, only 350 men remained subject to discipline. (He presumably referred to the area of operations; President Arroyo del Río had retained substantial forces in Quito to guard against possible rebellion.) Most of El Oro province, including its principal cities, Machala and Puerto Bolívar, were in Peruvian hands, and the invading forces were pointed like a dagger at Guayaquil, Ecuador's life line to the outside world.

As on July 5, actual hostilities jarred the self-appointed mediators into action. Argentine Foreign Minister Enrique Ruiz Guiñazú without waiting for his American and Brazilian colleagues fired off a "supreme appeal" to the two governments to stop fighting. He was immediately supported by the other mediators, and together they secured the unequivocal promise of Solf y Muro to a cease-fire to begin at a time set by the mediators and to a withdrawal of troops 15 kilometers behind the status quo line provided the government of Ecuador agreed to a similar procedure.

The mediators promptly set 6 p.m. on July 26 as the effective time, and Ambassadors Viteri and Alfaro cabled Tobar immediately to this effect. The Ecuadorean government, in turn, got word to its commanders on the western front by 9 p.m. on the 26th.

The Peruvian army, however, continued its advance into Ecuador as if nothing had happened, now against no resistance. Desperately the three ambassadors in Lima sought to find Solf y Muro, who conveniently disappeared for 22 hours. Finally, Ambassador Norweb succeeded in getting Solf to agree that if Ecuador would cancel its decree of mobilization and promise to protect Peruvian citizens in Ecuador, he would fix an hour for the cessation of hostilities within 24 hours or less. There followed hectic exchanges of messages between all the actors; the Ecuadoreans found it especially humiliating -- and undoubtedly politically dangerous, given the popular temper -- to cancel the mobilization, but at last it was done, with the face-saving device of having the decision announced over the Quito radio by the Argentine Minister. The cease-fire agreement was to be effective July 31 at 6 p.m.

The reason for Solf's inability to carry out his original promise is quite clear, although but partially documented. The Peruvian army had found the going easy,

and General Ureta was not about to stop his men until their primary military objectives were accomplished, nor was President Prado in a position to back up his Foreign Minister. As it was, there was plenty of evidence that the military leaders bitterly resented being checked on July 31, and much of this resentment was directed against the United States.

Implementation of the Cease-fire

Implementation of the cease-fire agreement was impeded by charges of violations on both sides and, in the end, Peru simply declined to carry out the portion which called for the withdrawal of troops behind the 1936 status quo line. Peru alleged that Ecuadorean troops had attacked Peruvian forces at Machala and Limon on July 31 and August 1. This drew a sharp rejoinder from the United States stating that evidences of further Peruvian advances were far more convincing than the allegations of Ecuadorean attacks.

On August 7 the ambassadors of the three powers, which we will refer to as mediators although Peru never agreed to accept mediation, called on Foreign Minister Solf and insisted that Peru allow neutral observers to proceed to the combat zone; otherwise the United States was prepared to send observers only to the Ecuadorean side since Ecuador not only had agreed to this procedure but was constantly urging that it be carried out without delay. After letting the diplomats wait for a week, Solf agreed to permit observers to supervise the cease-fire, but on the question of troop withdrawal, he said that Ecuador's aggression had destroyed the binding effect of the 1936 status quo line. While he did not specifically say that Peru would not withdraw its forces, it was clear that there would be no withdrawal until a definitive boundary settlement had been achieved.

Later, on August 28, the Department instructed Ambassador Norweb in conjunction with his Argentine and Brazilian colleagues in Lima to request permission to send observers also to the eastern segment of the boundary, but this démarche was unsuccessful. The Peruvians had completed their advance in the coastal area and held sufficient Ecuadorean territory to compel agreement with Peru's version of the boundary, while in the Oriente

advances were still taking place contrary to the cease-fire agreement. 1) In later years Peruvian writers have freely acknowledged this continuing encroachment. Luis Humberto Delgado in Las Guerras del Perú: Campaña del Ecuador says, "There was a period which we might call of hostilities in which a series of actions were carried out in compliance with orders of the commander of the Vth division, actions of which the most important was the capture of the Ecuadorean garrison at Rocafuerte, effected on August 11, 1941." 2)

After the fall of Rocafuerte, the Peruvian advance continued up the rivers without opposition to the limit of navigability. Sihuín on the Pastaza was captured on August 16, and the last Ecuadorean post seized was Cashuime on the upper Morona on September 6-7. 3) On September 4 the mediators threw in the sponge and informed Tobar that it had been impossible to procure the withdrawal of Peruvian troops from Ecuadorean territory; they counselled him to attempt to effect a boundary settlement by direct negotiation despite his objection that Ecuador could not negotiate while part of the country was under foreign occupation. Like the mediators, Tobar had no real alternative.

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1. Wood, Aggression and History, pp. 116-119.
 2. Quoted in Tobar, Invasión peruana, p. 270.
 3. Wood, History and Aggression, p. 120.

CHAPTER VI

MAKING THE PEACE

Stalemate

Whenever the situation appeared to have reached deadlock, Dr. Tobar customarily fired off a circular to all the American Republics, except, of course, Peru. The mediators' advice to undertake direct negotiations gave rise to another circular in which Dr. Tobar complained that Peruvian forces were still advancing in the Oriente and urging the other American states to adopt appropriate measures to save the prestige of the continent's juridical institutions. 1) This time his appeal did not fall on entirely deaf ears: Ezequiel Padilla, the Mexican Foreign Minister, on September 18, 1941, sent a note to the mediators asking that a general invitation be extended to all the American governments to take collective action to bring about peace between Ecuador and Peru. 2) Tobar expressed warm appreciation for the Mexican proposal but deferred to the mediators insofar as acceptance was concerned. 3) The mediators replied courteously but took no positive action on Padilla's proposal.

On the surface it would appear that an excellent opportunity had been lost to put increased pressure on Peru and strengthen the principle of collective action to preserve peace among the American Republics, said to have been of great interest to Under Secretary Welles. However, it may have been that the mediators considered it too late in the game to force Peruvian compliance and that summoning Peru before an inter-American body would rupture hemispheric solidarity without achieving any beneficial result.

The Peruvians left no doubt about their position in their reply to Padilla's proposal. Although they had long resented the interference of the three would-be

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1. Tobar, Invasión peruana, p. 281.
 2. Wood, U.S. and Latin American Wars, p. 290.
 3. Tobar, Invasión peruana, p. 283.

mediators, Peru suddenly found that their activities had been constructive: the cease-fire agreement of July 31 had put an end to military operations on the Zarumilla front, and foreign observers had been named to report on the compliance with the cease-fire; the procedure proposed by Mexico would necessarily be complicated, would slow up and hinder the action already under way of the "good offices", and would recreate the atmosphere of tensions, which should be avoided. 1)

Although the Mexican initiative got nowhere, the Peruvian authorities had apparently become convinced that it would be easier to deal with the three power set-up than cope with an assemblage of all the American Republics. In any case on September 13, 1941, Peru sent a memorandum to the three powers outlining its proposed conditions for the withdrawal of Peruvian forces from El Oro province. It represented a full statement of Peru's claims with no attempt at compromise. As Wood says, one can sense the attitude of a conqueror dictating terms. 2)

These terms included:

1. Recognition by Ecuador of Peru's "traditional dominion" in the western sector: an attached description gave the proposed boundary in some detail. It generally followed the 1936 line with variations in favor of Peru where there were minor divergences.
2. Direct negotiations between the two parties regarding the area between this line and the line proposed by Peru in the 1910 Spanish arbitration.
3. Recognition by Ecuador of Peru's sovereignty in the Oriente as far as Peru's present jurisdiction extended, according to an attached description. (The description transferred large chunks of territory on what had been the Ecuadorean side of the 1936 status

1. Villacrés Moscoso, Historia diplomática, Vol. IV, pp. 367-368.

2. Wood, The U.S. and Latin American Wars, p. 294.

quo line to Peru, including of course those areas occupied since July 23rd. 1) In a general way this line followed the limits of navigability as set forth in one part of the Cedula of 1802.)

4. Direct negotiations between the parties concerning the territory between this line and the line of Peru's claims in the Spanish arbitration. (It will be recalled that the latter line followed the crest of the eastern range of the Andes based on provincial boundaries in the Cedula of 1802. It cut Ecuador off completely from the Upper Amazon basin.)

5. When the foregoing points had been accepted by Ecuador and their fulfillment guaranteed by the friendly countries, Peruvian troops would be withdrawn from the portion of El Oro province recognized as Ecuadorean and that territory demilitarized under the supervision of observers from the three countries. (Emphasis added. Although the "friendly countries" were to be excluded from the negotiation of the settlement, they were to guarantee it and aid in its implementation.)

6. If, after the points of this agreement had been accepted by Ecuador, the agreement was not made into a treaty within six months, Peru would take such steps as it might deem advisable.

7. Reimbursement of Peru for its expenses in the occupation of El Oro would also be the subject of the negotiation referred to in paragraph 2. 2)

Whether the Peruvian position was due to the euphoria of victory, to pressure by the military or to a realistic assessment that, given the tensions in Europe and the Far East, no one would attempt sanctions, military or economic, against Peru, cannot be determined on the basis

1. See Map II in appendix to Wood, Aggression and History.

2. The full text of the Peruvian note with attachments is in Wood, U.S. and Latin American Wars, pp. 292-294. Foreign Relations 1941, Vol. VI, pp. 233-234 prints only the memorandum without the detailed territorial attachments.

of existing documentation, but the effect on the mediators was immediate. The ambassadors in Lima informed Foreign Minister Solf that they would not transmit the memorandum to their governments, though of course they did. Secretary Hull, despite his preoccupation with war-time problems, called in Carlos Concha, the Peruvian Ambassador, and gave him a talking-to probably unparalleled in the latter's diplomatic career.

After speaking of the serious concern throughout the hemisphere at the continuance of the controversy, Mr. Hull referred to the Peruvian statement that Peru would take matters in its own hands if a treaty were not concluded within six months after acceptance. The Secretary recorded that he had said, "...such reports imputed to Peru an attitude contrary to every line and syllable of the Lima declaration on conquest by force, and a disposition to do the same things Hitler is doing.... I made it clear to Dr. Concha that the situation was very serious and that it could not go on without almost all the other American Republics taking a stand and insisting on action by the other twenty countries." Mr. Hull added that Dr. Concha had seemed very disturbed when he left the office. 1)

A little time was required to achieve agreement among the three "friendly powers" on their reply to Solf's note of September 13, 1941. 2) When the reply was finally delivered on October 4, it omitted Secretary Hull's comparison of Peru's actions with those of Hitler, but it was so strong that it was not published in the 1941 edition of Foreign Relations. 3) The three-power memorandum reminded Peru of its earlier agreement to withdraw troops behind the status quo line and of its failure to comply.

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1. Wood, Aggression and History, pp. 134-136.
 2. This is sometimes referred to as the note (or memorandum) of September 15. This is presumably the date on which Peruvian ambassadors in the three capitals delivered copies of the memorandum the ambassadors in Lima had said they would not forward.
 3. The full Spanish text was first printed in Tobar's book, Invasión peruana...published in 1945, pp. 311-313.

The three governments repeated their conviction that troop withdrawal was essential for the conclusion of a satisfactory agreement. They agreed to observe the situation in the demilitarized zone if both Ecuador and Peru considered it necessary, and they strongly urged both parties to send plenipotentiaries to Buenos Aires to discuss all phases of the boundary dispute with representatives of the mediators who would assist in finding a mutually satisfactory solution.

Finally, the memorandum called attention to the interest of the other American Republics in the situation, particularly in view of the Declaration of Lima of 1938, and requested a prompt answer so that the others might be informed.

Here again the threat of collective consideration of the problem was hinted at -- apparently as far as it was considered feasible to go in the light of existing circumstances. Even so, the memorandum riled the Peruvians considerably, and Dr. Solf made efforts to have it withdrawn. The three mediators, however, refused unless Peru would agree to take the actions requested on its own initiative. In the end, the Peruvians decided to regard the memorandum as not received although the three powers did not agree to withdraw it. However, the Peruvians had the last word in a sense: having not received the memorandum (in their view) they obviously could not reply to it. Although the idea of a meeting of the parties with mediators at Buenos Aires lived on for some time, such a meeting only took place several months later in Rio de Janeiro and under greatly altered circumstances.

Nor had the threat of inter-American action entirely disappeared. After a period of some coolness in Chilean-Ecuadorean relations, Chilean Foreign Minister Juan Bautista Rosetti informed the new Ecuadorean Ambassador, Dr. Gonzalo Escudero, on September 22, 1941, that Chile could not view with indifference the occupation of Ecuadorean territory by the armed forces of Peru, and a few days later said that he was considering an action with the support of all the other American chancelleries to obtain the re-establishment of the de facto boundary as of July 5, 1941, a boundary which would then be guaranteed by all the countries of America until a legal boundary should be determined. 1)

1. Villacrés Moscoso, Historia diplomática, Vol. IV, pp. 380-381.

Before reacting to the Chilean proposal, Dr. Tobar consulted the mediators, one of whom (unnamed) thought the Chilean move inopportune. Tobar then suggested that the Chileans await a more appropriate moment when their initiative would not complicate the work of the mediators. He did, however, propose that Chile join the group of mediators. Brazil took the lead in securing U.S. and Argentine approval of this move, and on December 4 the three powers formally proposed to Ecuador and Peru the inclusion of Chile in the group of "friendly powers." Ecuador of course gave its approval at once, but Peru's acquiescence was delayed until January 5, 1942. 1)

The Talara Truce

The first slight sign of softening in Peru's rock-hard position came, curiously, from the military rather than the diplomats. The military observers despatched to the front lines by the mediating powers had urged the necessity of creating a demilitarized zone between the two armies in El Oro and Loja provinces, and on October 2, 1941, they secured the signature by the field commanders of an agreement to this effect. The object clearly was to prevent clashes between armed patrols which could provide the spark for a new offensive. 2) The agreement provided for the complete absence of land, sea or air forces of either party in the demilitarized zone, which would be governed by Ecuadorean civil authorities and police under the supervision of the observers, and stated that the delimitation of the zone would have no present or future effect on sovereignty. 3)

Although the State Department regarded this agreement as a purely military one, its signature by the six observers of the three "friendly states" could have had the

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1. Tobar, Invasión peruana, pp. 289-290; Villacrés Moscoso, Historia diplomática. Vol. IV, p. 394.
 2. The demilitarized zone is shown on map III in Wood, U.S. and Latin American Wars.
 3. Tobar, Invasión peruana, pp. 306-308; Villacrés Moscoso, Historia diplomática. Vol. IV, pp. 385-387.

effect of undercutting to a slight degree the insistence of the three that Peruvian forces should retire 15 kms behind the 1936 status quo line. A stable situation had been created at the front, and Peru could sit back and wait out both the mediators and the Ecuadoreans.

On October 16, the Peruvian withdrawal behind the lines of the DMZ took place, apparently without serious hitches although the observers found evidence of looting and "uncivilized acts reproachable from every point of view." 1) In another good-will gesture the Peruvian government on November 23rd announced the liberation of all civilian and military prisoners, a move which was well-received in Quito. 2)

Further evidence that Peru was slowly moderating its stance came in mid-October, when Ambassador Norweb reported that Peruvian officials appeared to desire a rapid settlement in contrast with their earlier attitude. The reasons for this shift are not altogether clear for Peru's position remained strong. Wood speculates that General Ureta may have informed Lima that if a settlement were not reached soon, he would advance on Guayaquil, and that the civilian authorities were reluctant to face the international complications such a move would almost surely produce. 3) Solf quite possibly did not relish the task of defending Peru's position before the Foreign Ministers of the American Republics, and the possibility of such a meeting had been repeatedly raised. Further, there was the expense of maintaining an army in the field which must have weighed heavily on the exchequer. In any case, at the end of October Solf suggested to the ambassadors of the three mediators that Peru was prepared to negotiate on the basis of the 1936 status quo line provided the settlements of Andoas and Rocafuerte were ceded to Peru. This represented a substantial withdrawal from Peru's earlier demands and perhaps indicates that the stiff notes of October 4 had made an impression.

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1. Villacrés Moscoso, Historia diplomática, Vol. IV, p. 388.
 2. Foreign Relations 1941. Vol. VI, pp. 243-244.
 3. Aggression and History, p. 145.

In the State Department too a cooler breeze was blowing. In a memorandum of November 7, 1941, John Fremont Melby pointed out that the withdrawal of Peruvian troops behind the status quo line was politically impossible, and he suggested that the Department and the other mediators should consider making proposals based on the 1936 line. He concluded, "Failure to make the most of the present respite is almost certain to result in complete stagnation and eventual explosion." 1) Melby may also have been concerned about the deterioration of U.S.-Peruvian bilateral relations. The anti-U.S. campaign in the pro-government Peruvian press reached a new high in virulence in the period following the delivery of the October 4 notes.

The situation was complicated by events not connected with the Ecuadorean boundary problem: the Norwegian government in exile had sold 18 Douglas light bombers to Peru, and a transit license had been granted by the United States for their shipment from Canada to Peru via New York. While the planes were en route through the United States, the transit permit was cancelled, and the scream of outrage from Peru can more easily be imagined than described. Ambassador Norweb reported keen resentment even among generally fair Peruvians. The press revived the old canard that the United States would receive the Galapagos Islands in return for its support of Ecuador, and to this was added a vicious whispering campaign against Sumner Welles personally, alleging that he owned valuable properties in Ecuador and was related to the Alfaro family.

Welles was sufficiently concerned to write an official-informal letter to Ambassador Norweb, asking him to see President Prado personally and try to straighten things out. The ambassador was to point out that when every scrap of material was needed to combat Hitler's aggression, the United States could not let the planes be diverted to a country which could only use them against its neighbor. The United States had no intention of annexing the Galapagos; after the boundary question was settled the president had in mind to propose an inter-American

1. Wood, Aggression and History, pp. 145-147.

trust arrangement not only to insure the security of the hemisphere but also to preserve the animal and plant life. Finally, Welles authorized Norweb to assure President Prado that he had no financial interest in Latin America, direct or indirect. On the constructive side, Welles reiterated the proposal that Peru and Ecuador meet with the mediators in Buenos Aires to negotiate a permanent settlement. 1)

Norweb's interview with Prado took place on November 9, 1941. The President assured Norweb of his unswerving pro-U.S. and pro-British sentiments but said the mediators had been playing Ecuador's game and that the United States had to take the brunt of the criticism because it was "the dominating influence in the inter-American scene." As for a possible boundary settlement, Prado said that Peru did not want one inch of Ecuadorean territory; in the west the boundary could generally follow the status quo line but in the east Peru would insist on Andoas, which he said was "definitely Peruvian", and Rocafuerte, which was "needed for communications." 2)

The bombs that fell on Pearl Harbor on December 7 brought about a radical change in the world situation; instead of efforts to preserve peace the United States now became engaged in an all-out effort to muster total hemispheric support behind the war effort. Despite preoccupation with matters of global concern, the Department of State and the other mediators considered a pacific solution of the Ecuador-Peru boundary dispute "in the highest degree essential" and hoped that the solution might be found before the Third Meeting of Consultation of Ministers of Foreign Affairs (MFM) convened in Rio de Janeiro on January 15, 1942.

In a message sent out December 23, 1941, to be delivered simultaneously to the Foreign Ministers of the two parties in dispute, the mediators stated that the unity of the Americas was more than ever necessary under existing world conditions and that it would not be achieved so long as the controversy continued. They then proposed that

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1. Wood, Aggression and History, pp. 147-150.
 2. Wood, Aggression and History, pp. 151-153.

both sides accept the status quo line of 1936 as a basis for negotiating a permanent and definitive boundary settlement, that Peru withdraw its troops behind this line and that negotiations for a final settlement should take place in Buenos Aires as proposed previously. 1) The mediators informed the other American Republics of their démarche, but did not request any supportive actions.

After consultation with the Advisory Council where the Minister of Defense strongly supported the mediators' proposal, Ecuador accepted it. Peru, however, insisted that Ecuador accept the 1936 line as representing its maximum aspiration; Peru would present the line of its present occupation as its maximum aspiration and the zone in between would be subject to negotiation. 2) Dr. Tobar did not learn that Peru had rejected this last effort of the mediators until he passed through Washington on his way to Rio on January 8.

The last effort of the mediators was not, however, quite the last play in the game before the Rio Conference. Realizing that Peru would not accept the December 23 proposal, Aranha alone without consulting the United States or Argentina proposed a solution which became known as the Aranha line and which formed the basis for the eventual settlement. In accordance with the Peruvians' often-expressed determination, the Aranha line gave both Andoas and Rocafuerte to Peru. In so doing the boundary on the Tigre River was about 100 kms. west of the 1936 line and on the Pastaza about 80 kms. to the west, thus giving Peru approximately 18,500 square kilometers in addition to what it had held in 1936. Peru accepted this proposal on January 1, 1942. 3)

This independent action by Brazil annoyed Welles when he learned of it; he considered that it consecrated the spoils of aggression and made a mockery of the inter-American system of peaceful settlement. He told Aranha

1. Foreign Relations 1941. Vol. VI, p. 250.

2. Foreign Relations 1941, Vol. VI, p. 251; Villarcres Moscoso, Historia diplomática, p. 399; Tobar, Invasión peruana, p. 337-339.

3. Wood, Aggression and History, pp. 163-166.

he hoped the mediators would endeavor to secure some modifications in the line as compensation for Ecuador, but given the world situation he really had no choice but to accept in principle what Aranha had done. When he broke the sad news to Foreign Minister Tobar Donoso on January 8, Welles said that Aranha was "by virtue of his qualities of intelligence and character, the man who would be called upon to settle the controversy" at Rio. The line as accepted by Peru was, as Wood points out, considerably less than Peru had demanded on September 15 and was less than Argentina had been willing to propose in the Fall of 1941.

In accepting Aranha's unilateral proposal the United States virtually bowed out of that phase of the Ecuador-Peru dispute. Engaged in a war for which it was inadequately prepared, the United States could not afford to alienate mineral-rich Peru. Nothing short of force or long continued economic sanctions could have induced the Peruvian army to surrender its gains or to give Ecuador an outlet on the Marañón, and the consequences of such a course would be incalculable. Brazil was now in the driver's seat so far as the Ecuadorean-Peruvian dispute was concerned, and it was destined to stay there for an extended period.

The Rio Conference and the Rio Protocol 1)

The story of the Third MFM, so far as it relates to the Ecuador-Peru dispute and the negotiation of the Rio Protocol, is basically the story of Ecuador's attempt to parlay its virtually non-existent bargaining power into a settlement which would preserve some shreds of Ecuador's aspirations to be an Amazonian nation. To review briefly: Ecuador's legal titles to the trans-Andean area based on discovery and the non-execution

1. In this account of the negotiations at the Rio Conference, I have followed the account given by Ecuadorean Foreign Minister Tobar since his is the only first-hand version of events available. It has been in print since 1945 and to my knowledge the essential facts have not been disputed despite wide-spread criticisms of Tobar's decisions.

of the Royal Cedula of 1802 were not beyond question; Ecuador's interest in the area did not manifest itself during most of the 19th century except by asserting paper claims and attempting to give away a portion of the territory in settlement of the British debt; Ecuador had no settlement on the Marañón River, and the nearest military outposts were some way from that stream; as attempts at settlement either by direct negotiation, by arbitration or a combination of the two had repeatedly failed, Peruvian offers of settlement became less generous and its zone of actual occupation larger; after the 1941 invasion Peru had actual control of all the territory it claimed, its military forces were in position to strike at Guayaquil, and the Ecuadorean army was powerless to stop a further attack; the mediators while sympathetic to Ecuador's plight and desirous of maintaining the principle of non-recognition of the fruits of aggression were physically and politically unable because of the war to bring the kind of pressure on Peru needed to force it to disgorge its conquests. In those circumstances the options available to Ecuador were at best quite limited.

Although Dr. Tobar's tactics have been subjected to harsh criticism, including some from other members of his delegation, it does not appear that he overlooked many opportunities. His first effort was to get the conference postponed until Peru had evacuated Ecuadorean territory. When advised by his ambassador in Washington that the urgencies of the war situation would permit of no delay, he then suggested that Ecuador not attend. Again Ambassador Alfaro advised that Ecuador's absence would favor Peru. Chile, Argentina, Bolivia and Mexico counselled attendance, and on January 2, 1942, the Advisory Council agreed on attendance: Peru had refused to meet with Ecuador and the mediators in Buenos Aires, but all would be in Rio, and this would provide an opportunity to discuss the matter outside official conference sessions. The presence of the other American Republics might somehow be used to bring moral suasion to bear on Peru. So Dr. Tobar reluctantly led his delegation to Rio.

Tobar himself was invited to travel via Washington and accompany Under Secretary Sumner Welles on a special plane to Rio. While in Washington Tobar had a long conversation with Welles and learned of Peru's rejection of the mediators' December 23 proposal and of Aranha's proposed line. He noted with special foreboding Aranha's conclusion, "We realize that this situation implies a genuine

sacrifice (by Ecuador); however, we do not see any other solution capable of re-establishing harmony between both countries and hence permitting America to take, in an atmosphere of confidence and solidarity, the decisions which at this time are incumbent upon each and every one of the nations of the continent." 1)

Tobar also learned from Welles that the Argentine position on settlement coincided virtually 100% with that of the Peruvians, and when Tobar exclaimed that both Argentine and Brazilian plans required Ecuador to make all the sacrifices and that they recognized Peru's conquest by force, Welles replied that it was impossible to overlook certain facts, which Tobar took to be a delicate reference to Ecuador's defeat; however, it could have alluded equally well to the world situation and the war.

In Rio on January 12 the Ecuadorean delegation met to determine strategy. Their first plan was to leak the idea that Ecuador would not attend the sessions of the conference unless means were found to permit attendance in conditions satisfactory to the national dignity; they would then do everything possible to obtain the signature of a protocol embodying the principles of the mediators' December 23 proposal. With this scheme in the backs of their minds the entire delegation called on Aranha on the morning of January 13.

The Brazilian Foreign Minister expressed the hope that the boundary dispute might be settled during the conference; he complained that Ecuador had never presented the line of its minimum aspiration and urged that this be done. The Ecuadoreans replied that they had accepted the mediators' proposals of October 4 and December 23 as satisfactory bases of negotiations, implying that the Peruvians should now make some concessions, especially withdrawing their troops from Ecuadorean territory. 2)

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1. Tobar, Invasión peruana, p. 358.
 2. Tobar, Invasión peruana, p. 367.

The same afternoon Tobar and the Ecuadorean Minister to Brazil, Enrique Arroyo Delgado, called privately on Aranha, and on this occasion the Brazilian statesman really took off his velvet glove. He said Ecuador should make any sacrifice to settle the boundary question definitively; that once the conference was over, the mediators would no longer be able to give it due attention because of the serious world problems confronting them and that Ecuador would therefore be at the mercy -- not just of the civilian government at Lima -- but of General Ureta.

Tobar replied that he was sure the mediators would maintain an attitude which corresponded with the American conscience and with the damage to the legal order caused by the invasion of Ecuadorean territory. He thought acceptance of the mediators' December proposal represented enough sacrifice for Ecuador, and he again urged the signature of a protocol providing for the withdrawal of Peruvian troops and negotiations in Buenos Aires or elsewhere.

Judging from his reply Aranha must have been irked by Tobar's high-flown rhetoric and moralistic tone. He said one could not ignore reality; this was the only opportunity, perhaps the last that Ecuador would have to solve the problem peacefully; if the controversy were not settled, it would get worse. Aranha went on, "A country which has no frontiers, is like a man without a skin. You need peace more than territory," and he concluded by saying that if Ecuador didn't settle now, Peru would continue the invasion. Settlement along the lines of the December plan was impossible; hence Ecuador should present a line consistent with the real circumstances so that the matter could be settled before the end of the conference. 1)

While Tobar was getting the word from Aranha, other members of his delegation were calling on Welles. On questioning they confessed their plans to boycott the sessions while Ecuador remained under Peruvian occupation, and Welles warned them that failure to attend the inaugural

1. Tobar, Invasión peruana, pp. 369-370. Underscored portions in large caps in Tobar.

session, when the President of Brazil was to speak, would be regarded as offensive to the Brazilians; however, he did not object to their absentsing themselves from the remaining sessions and to their notifying the other delegations of this by note. Welles also urged the importance of a settlement and suggested the Ecuadoreans obtain full powers from their government to sign. In a later meeting Welles, like Aranha, warned that the mediation could not continue if a settlement were not reached at the conference. 1)

Despite Welles' reported O.K., when Minister Arroyo Delgado on January 16 handed Aranha the draft of a long note filled with resounding clichés announcing that Ecuador would not attend the sessions of the conference, the Brazilian Foreign Minister became furious and told him that Brazil would immediately abandon its attempts at mediation and was sure the other mediators would do the same. Somewhat mollified by assurances that Ecuador did not desire to hinder the work of the conference, Aranha agreed to keep the note confidential until after his meeting with Tobar the following day. 2) Gonzalo Escudero, one of the members of the delegation, expressed the view many years later (1968) that Aranha's expressions were theatrical gestures designed to intimidate the Ecuadoreans and deplored the fact that Tobar yielded. 3)

In effect, confronted with the same threats in an interview with Aranha on January 17, 1942, Tobar agreed to attend the sessions but urged that Aranha and the other mediators make a renewed effort to rescue Ecuador. For his part, Aranha again asked the Ecuadoreans to give him a "confidential line" on which to base his discussions with the Peruvians. 4)

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1. Tobar, Invasión peruana, pp. 372-374.
 2. Tobar, Invasión peruana, pp. 375-378.
 3. Escudero, Justicia para el Ecuador, Quito, 1968, pp. 82-83 as quoted in Villacrés Moscoso, Historia diplomática. Vol. IV, p. 420 and p. 423.
 4. Tobar, Invasión peruana, pp. 379-380.

Tobar and his colleagues thereupon set to work to provide the "line" requested by Aranha, but here they ran into the necessity of getting authorization from the government in Quito. This involved problems of slow transmission of cables and of red tape in Quito. Before the president would authorize the delegation even to seek a final agreement, he had to submit the question to the Advisory Council, the Patriotic Council and his cabinet.

Quite understandably the people in Quito could not grasp the atmosphere of the conference, where Ecuador's problem was a small and inconsequential portion of the vast problems being considered, nor could they fully appreciate Ecuador's lack of bargaining power although the Minister of Defense assured the Advisory Council that Ecuador could not resist a renewed Peruvian attack. In the end the Foreign Minister was authorized to negotiate, but he was instructed to exhaust every effort to obtain access to the Marañón between the mouth of the Santiago and that of the Morona. The telegram containing the authorization was received at midnight between January 20 and 21. 1)

On January 21, the Ecuadorean delegation presented Messrs. Aranha and Welles with a map showing the line authorized by Quito. Aranha appeared eager to help but noted that the Peruvians had consistently refused to grant Ecuador access to the Marañón. Meanwhile the conference was approaching its climax: the vote on the resolution to break diplomatic relations with the Axis powers. January 22, 23, and 24 passed without word from Welles or Aranha. The tension within the Ecuadorean delegation must have been nearly unbearable, and especially for Tobar, on whose shoulders the greatest responsibility rested.

What had the Peruvians been doing while all this was going on? Unfortunately none of the Peruvian delegation has made public the kind of description Dr. Tobar has left us. There are a few facts and some plausible speculation. One of the facts is that Peru bent every

1. Tobar, Invasión peruana, pp. 384-391.

effort to prevent the consideration of the controversy with Ecuador by the conference or even its mention. Ecuador and, according to Tobar, "several other countries" had attempted to have this topic placed on the agenda, but the move had been rejected, following a Peruvian threat not to attend if the agenda were to include its dispute with Ecuador. 1)

It is also clear that Peru used all its influence at Rio to prevent the Ecuadorean delegation from raising the issue on the floor of the conference. On the testimony of the Argentine Socialist Senator Nicolás Repetto, Villacrés Moscoso states that Peru at the beginning of the conference was or pretended to be cooperating with the Argentines and Chileans in forming a bloc opposed to the measures advocated by the United States against the Axis, such as breaking diplomatic relations. Using this as a bargaining counter, Peru succeeded in inducing the United States and Brazil not only to keep the subject off the conference floor but even, according to Villacrés, to work on behalf of Peru in forcing Ecuador to accept a highly unfavorable settlement. 2) This thesis derives a bit of support from Welles' telegram of January 14, 1942, in which he reported to Washington that he had had interviews with a number of Foreign Ministers about breaking relations with the Axis and found the Peruvians obviously lacking in enthusiasm. 3)

It is not necessary to accept the second half of Villacrés' version of events in order to find the first half probable. Hemispheric unity in the face of Axis aggression was obviously an overriding consideration both for Welles and for Aranha; airing the controversy at the conference would be unlikely to soften the Peruvian position and might well harden it; it could cause Peru to leave the conference opening a breach in the united front of the Americas which Welles wished to present to the Axis. On the other hand, there is little reason

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1. Tobar, Invasión peruana, p. 343.
 2. Villacrés Moscoso, Historia diplomática, Vol. IV, pp. 404-405.
 3. Villacrés Moscoso, Historia diplomática, Vol. IV, pp. 404-405.

to doubt that both statesmen, and especially Welles, were sympathetic with Ecuador's plight and did what they could to get the best deal possible for Ecuador in the circumstances. Unfortunately, the "circumstances" all favored Peru, and the mediators' room for maneuver was distinctly limited.

After the three day hiatus while the substantive work of the conference was being dispatched, the Ecuador-Peru problem again became active on January 25. On that day the Peruvians presented their line to Aranha, which turned out to be about the same as before. Tobar suggested that language be inserted to provide for a later conference in Buenos Aires to work out the details. While this was being presented to the Peruvians, the Ecuadorean delegation on January 27, which was to have been the final day of the conference, decided that, at the final plenary session, Tobar should make a statement of Ecuador's case and announce that Ecuador would not sign the final act of the conference. On learning this Aranha postponed the final plenary and devoted all his efforts to effecting a solution of the Ecuador-Peru dispute.

In the small hours of the morning of January 28th the Ecuadoreans learned that Peru had rejected the proposal for a conference in Buenos Aires and had insisted on final settlement there and then. Tobar then informed Aranha that he would go ahead with his plan to speak at the final plenary session.

As things developed, the Ecuadoreans were not even to have the satisfaction of presenting their case publicly. The wily Aranha, as President of the Conference, simply cancelled the final plenary and announced that the closing session of the conference would be held at six that evening. (The closing session of a conference is normally purely protocolary in character with formal addresses by the president, representing the host country, and one representative of the visitors. Substantive issues are not debated.) Naturally the Ecuadorean delegation protested against this decision but got no support from other delegations. Tobar wrote sadly, "Many didn't even want to hear anything about the Ecuadorean-Peruvian problem, the most American of those which could be presented to the conference." 1)

1. Tobar, Invasión peruana, p. 403.

At one p.m. on January 28 the mediators summoned the Ecuadorean Minister to Brazil, Dr. Arroyo Delgado, and presented him with the results of their "intensive struggle" with Peru. It was a great disappointment since it excluded Ecuador completely from the Marañón. Arroyo refused even to take the proposed protocol to Dr. Tobar until the mediators had agreed to slight modifications in Ecuador's favor in the northern portion of the Oriente. They then informed him that they would await the Ecuadorean reply at 4 p.m.

Tobar says there was a look of stupefaction on the faces of the mediators when it was announced that Ecuador could not accept the draft protocol. There followed a hectic session with the Peruvians in one room of the Itamaraty and the Ecuadoreans in another with Aranha shuttling back and forth between them. The Ecuadoreans were able to extract a few modifications from their opponent (Aranha once described Solf as "that man of granite"). One which could conceivably prove useful in the future would permit the parties, by mutual agreement, to make alterations in the boundary as described in the agreement when considered convenient to make it correspond to geographic realities. 1)

By this time it was already past time for the closing session of the conference, over which Aranha was to preside and make the concluding address. On leaving the Ecuadoreans alone to make their decision, Aranha said, "Consider what is best for you. Decide, Dr. Tobar, and come to the session where I will take pleasure in announcing that Ecuador and Peru have reached a final agreement and that the protocol will be signed tonight." 2)

With the repeated warnings of the mediators ringing in his ears that this was the last chance, Tobar was left to make his lonely decision. No one, no member of the delegation, could share it with him; he was not even allowed time to consult his president. He saw on one hand the ruin of Ecuador's dreams of greatness, and

1. Article IX of the protocol.

2. Tobar, Invasión peruana, p. 409; Wood, The United States and Latin American Wars, p. 315.

on the other the threat that Peru's renewed invasion might result in the dismemberment - perhaps even the disappearance - of Ecuador. A sacrificial victim was necessary. He decided to sign. 1)

By the time Tobar reached the conference room Aranha was well along with his address, but at the end, he was able to add that he was experiencing "one of the deepest emotions of his life to announce that those courageous people (Ecuador and Peru) had clasped hands so that America might continue its march which no one would ever stop." 2)

At ten o'clock on the night of January 28, 1942, the Ecuadorean and Peruvian delegations met together for the first time in this whole negotiation. Despite all the preliminary work there were still details to be straightened out. The Peruvian delegation objected to Article VI of the draft protocol which granted Ecuador the same rights of navigation on the Amazon and its northern tributaries as those enjoyed by Brazil and Colombia; Tobar said he would not sign the protocol if it were removed. At this point Sumner Welles intervened to remark rather sharply that that article had been in the protocol from the beginning and could not be removed. The Peruvians made no further objection.

There was a fair amount of discussion over the exact wording, and it was not until two a.m. on January 29, 1942, that the ironically named Protocol of Peace, Friendship, and Boundaries was signed; it soon became known simply as the Rio Protocol. It has not yet (1979) been fully implemented, and it certainly ranks as one of the more controversial documents in inter-American relations. It did bring peace, but the hoped-for friendship has been long in coming. At eight the following morning, Tobar sent a telegram to President Arroyo del Río offering to accept full responsibility if the president wished to assert that he had exceeded his instructions. Arroyo immediately wired back expressing his confidence in Tobar and saying there was no reason why he should accept full responsibility. 3) It was a small measure of comfort in an anguished situation.

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1. Tobar, Invasión peruana, pp. 409-411.
 2. Tobar, Invasión peruana, p. 411.
 3. Tobar, Invasión peruana, p. 415-416.

CHAPTER VII

THE PROTOCOL IN FORCE

The Terms

A review of the principal provisions of the Rio Protocol of January 29, 1942, is in order before proceeding to consider the problems which arose in connection with its implementation. 1) The protocol, a treaty in all but name, affirmed the intent of the two governments to maintain peace and friendship and to abstain from any act capable of disturbing those relations. The boundary agreement was set forth in Article VIII (see map following page 36). As we have noted, the settlement gave Ecuador no territory along the Marañón and, in the southeastern portion, placed the boundary roughly at the head of navigation on the rivers. In the northeast, however, the line swung outward in a wide curve to leave within Ecuador a considerable stretch of the Napo and the Aguarico navigable by small boats. In this area, Peruvian troops were required to retire some 200 kms. down the Napo, surrendering territory they had occupied. 2)

Peruvian troops were to withdraw behind the new boundary within 15 days, and Argentina, Brazil, Chile and the United States were to cooperate through their military observers in working out the details of the troop withdrawal. Troops would remain in their new positions until the boundary was completed, and Ecuador would exercise only civil jurisdiction over the area evacuated by Peru as in the demilitarized zone set up in the Talara Truce. While both countries accepted the boundary set forth in Article VIII, the protocol provided that, with the collaboration of the guarantors, modifications could be introduced to adjust the line to geographic realities. Hence if the parties could agree on the changes they wished to make, this clause would provide a means of

1. The full text from Executive Agreement Series No. 288 is reproduced in the appendix. Its Spanish text is in Tobar, Invasión peruana, pp. 419-422 and the English may also be found in Wood, Aggression and History, pp. 259-261.

2. Wood, Aggression and History, p. 171.

overcoming the discrepancies which were revealed when it was found that the terms of the protocol were not, in fact, consistent with geographical reality.

From the viewpoint of U.S. foreign policy, the clauses relating to the guarantee of the treaty are of especial significance. In Article V Argentina, Brazil, Chile and the United States agreed to guarantee the execution of the treaty until the definitive demarcation of the boundary should have been completed, and Article VII obligated the guarantors to participate with the parties in the resolution of any doubts or disagreements which might arise in the execution of the protocol.

The first noteworthy item is that the responsibilities of the guarantors were to continue until the definitive demarcation was completed; since a portion of the boundary has not yet been marked in accordance with the procedures which were subsequently agreed upon, the guarantors are not yet relieved of their obligations, nor at this time is there any end in sight.

Article VII continued the rather vague mediatory role which the guarantors had gradually assumed despite Peruvian insistence that only "good offices" were involved. It placed primary responsibility on the parties themselves to resolve the "doubts and disagreements" but imposed on the guarantors the task of assisting in reaching a solution. While the text does not specifically limit this responsibility in time, reference to Article V indicates that their activity is to continue until the boundary is finally demarcated.

Article VI relates to freedom of navigation on the Amazon and its northern tributaries and is the clause saved by Sumner Welles from last minute excision by the Peruvian delegation. It gives Ecuador the same concessions on these streams as those enjoyed by Brazil and Colombia, plus such additional rights as may be granted in a Treaty of Commerce and Navigation designed to facilitate free and gratuitous navigation on those rivers. By this clause Tobar hoped to save something from the wreck of Ecuador's aspirations and leave the door ajar for Ecuador to become, on a small scale at least, an Amazonian power. However, while Ecuador should enjoy equal privileges with Colombia and Brazil, the Treaty of Commerce and Navigation has

never been concluded, due in part to the failure to complete the marking of the boundary. The question of Ecuador's rights of navigation will be discussed separately, but it would seem likely that the most feasible way for Ecuador to facilitate commerce down-river would lie through the use of this privilege rather than through sovereign access to the Marañón.

A final provision stipulated that the protocol should be submitted to the respective congresses and approval obtained within 30 days, and the whole document was signed not only by Foreign Ministers Tobar and Solf y Muro but also by the representatives of the four guarantor powers. As previously noted, it was published in the Executive Agreement Series of United States international acts, thus reinforcing its binding character on the United States Government.

Ecuadorean Reaction to the Protocol

Dr. Tobar had few illusions about the reception he could expect on his return to Quito. As the delegation was leaving Rio at six a.m. on January 30, 1942, Brazilian Foreign Minister Oswaldo Aranha, who had come to the airport to see them off, said to Dr. Alejandro Ponce Borja, a member of the delegation, "Go back to your country, work hard, pull yourselves together and have faith that injustice is not permanent." 1) These and the telegrams of support from the President and the Acting Foreign Minister were about the last kind words Tobar was to hear on the subject of the Rio Protocol.

Dr. Tobar had been informed during the negotiation that the country was seething with demonstrations, and announcement of the signing of the protocol was met by popular protests and condemnatory resolutions from such bodies as the National Defense Council in Quito and the Guayaquil Council of National Defense. In two respects Tobar's worst fears were not realized: the Arroyo del Rio government survived for more than two years after the signature of the protocol, and the document itself

1. Tobar, Invasión peruana, p. 416.

was ratified by the Ecuadorean Congress, thus avoiding the danger that the Peruvian invasion might go further or that Peru might remain indefinitely in occupation of Ecuadorean territory.

For Tobar personally, the road ahead was to be bitter. After Arroyo del Río was overthrown in May 1944, he was imprisoned for a few days, and afterwards the trial of all those who had participated in the events of 1941-42 was ordered. These trials never actually took place, but when the National Assembly met shortly after the revolution, a motion was made that all those who had taken part in the negotiation of the Rio Protocol should be declared traitors. The Assembly called for evidence, and Dr. Tobar submitted a lengthy defense of his actions as Foreign Minister which, he says, was never read to the Assembly, and only one or two members of the Committee on Foreign Relations actually read it. It formed the basis for his book, La Invasión Peruana y el Protocolo de Río, which has been so frequently cited in this paper. Nor was he permitted to defend himself on the Assembly floor.

Finally, after long debates, the Assembly on June 20, 1945, approved a number of conclusions, of which one was "Dr. Carlos Alberto Arroyo del Río and former Foreign Minister Julio Tobar Donoso are responsible for conducting a weak and incorrect foreign policy which resulted in the mutilation of the national territory." 1)

The bitter frustration of political opponents and ultra-nationalist intellectuals pursued Tobar throughout the years. In 1950, on the anniversary of the protocol, the socialist newspaper La Tierra concentrated its censure on the "Ecuadorean traitors who cooperated with Peru in the rape of Ecuador," 2) and in January 1965, 23 years after the signature of the protocol, when Tobar was elected President of the Ecuadorean Supreme Court, the junta then in power felt it necessary to reject his election "for patriotic reasons." Although his colleagues on the bench of the Supreme Court and his students at the Catholic University, where he was Dean of the Faculty

1. Tobar, Invasión peruana, p. vii.

2. Emb. Quito D-100, 1-30-50.

of Jurisprudence, protested this action, Dr. Tobar had beaten the junta to the draw by declining the election on grounds of ill-health just before the junta's decision was made public. He did, however, remain as head of the First Chamber of the Court. 1)

The principal cause of wrath was, of course, the territorial loss suffered by Ecuador. Dr. Rafael Alvarado calculated that, on the basis of the 1829 Treaty of Guayaquil and the Pedemonte-Mosquera protocol of 1830, Ecuador lost by the Rio Protocol 184,795 square kilometers, an area nearly equal in size to Uruguay. 2) To reach this figure Alvarado included Tumbes and Jaén, which had been under Peruvian jurisdiction since the birth of the Republic, and the area around Iquitos which had been Peruvian since the 1850s.

On the other hand, Tobar Donoso based his calculation of the loss on the status quo line of 1936 and pointed out that while Ecuador had lost 18,553.5 sq. kms. in the southeast, it had gained 5,072.5 sq. kms. in the northeast, leaving a net loss of only 13,481 sq. kms. 3) This probably underestimates the Ecuadorean loss since the status quo line of 1936 was a Peruvian drawn line and included not only everything which Peru had occupied, with or without right, during the preceding decades, but also the unoccupied territory between Peruvian and Ecuadorean outposts. The fact remains that the vast territory east of the Andes and north of the Marañón was not populated, with minor exceptions, by either country. The native American inhabitants were blissfully unaware of the weighty arguments between Quito and Lima and probably wished only to be let alone. So it is not possible to assess accurately what Ecuador "lost." It is, however, possible to say that it lost little that it had ever possessed. The two towns of Rocafuerte and Andoas appear to have been the only Ecuadorean settlements actually transferred to Peru, and the Peruvians alleged that Andoas was "purely Peruvian."

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1. Quito's A-358, 1-15-65.
 2. Pérez Concha, Ensayo, 2nd ed. Vol. II, p. 339.
 3. Tobar, Invasión peruana, pp. 461-462.

Of greater importance than the amount of territory lost is the quality of the area retained. By the Rio agreement Ecuador retained the foothills of the eastern cordillera of the Andes where the streams flow rapidly and the climate is better. The Peruvian area is part of the great Amazon Basin -- low, flat and swampy. Portions of the Ecuadorean Oriente have potential for agriculture, grazing and the development of hydroelectric power. Since 1941 there has been substantial development of petroleum deposits in the northern sector, near the Colombian border. Having retained 102,330 sq. kms. of the Oriente, Ecuador faces a challenge in developing it for which Ecuador's resources are barely adequate. Spreading those resources even more thinly would seem to be a profitless operation.

One potential benefit which Ecuador derived from the Rio Protocol was obtaining the "guarantee" of Argentina, Brazil, Chile and the United States for what was left of the Oriente. At the time this guarantee was not highly valued. Many Ecuadoreans bitterly criticized Tobar for his reliance on the mediators, who were regarded as having been biased in favor of Peru, and for his failure to push strongly for action by the inter-American community of nations as proposed by Mexico and Chile in the Fall of 1941. Villacrés Moscoso is particularly outspoken in his condemnation of the mediators. He writes that he cannot imagine why Tobar referred the Chilean proposal to the mediators because "that mediation, since it began, had been disastrous for Ecuadorean interests and very favorable to the Peruvians, and therefore it was indispensable to replace those three countries by the action of a larger number of countries...precisely because it was apparent that the mediation had been perverted and was not accomplishing its objectives." 1)

There may be Ecuadoreans who take a more charitable view of the mediators' efforts, but they rarely put their views in print. Peacemakers may indeed be blessed but their reward will not be in this world. It is true, as its Ecuadorean critics point out, that the Rio Protocol

1. Historia diplomática. Vol. IV, p. 382.

was far from an ideal agreement. It was achieved through a great deal of arm twisting by the mediators and by dire predictions about what the Peruvians would do if no settlement were reached. A sizable chunk of unquestionably Ecuadorean territory was occupied by Peruvian troops in the face of inter-American pronouncements proscribing the use of force as an instrument of policy; 1) hence it could be and has been charged that the protocol was invalid because it was negotiated under duress.

Nevertheless, considering the world situation at the time, the ambiguity of Ecuador's legal titles, and the overwhelming strength of the Peruvian army, it was probably the best agreement available to Ecuador. It preserved a substantial portion of the Oriente for Ecuador; it involved the mediators officially, as guarantors, in the execution of the agreement; it freed Ecuador from the threat of further Peruvian advances against Guayaquil, Loja or Cuenca and brought about the evacuation of the occupied portions of Ecuador. But few Ecuadoreans see it in this light.

In spite of the popular outcry, the approval of the Rio Protocol by the Ecuadorean Congress was relatively easy although there were "heated debates" and some members left the floor to avoid voting one way or the other. Military leaders had made it abundantly clear that further armed resistance was impossible. In hearings before the Advisory Council on January 19, 1942, the Minister of Defense, Col. Carlos A. Guerrero, said in the course of a long statement, "If we were in condition to make war with probabilities of victory, clearly Ecuador's attitude would be different. But, in present circumstances, I am sure there would not be a single soldier who could advocate an armed attack." In concluding his testimony Col. Guerrero said, "...to answer Sr. Jaramillo's question, permit me to state we cannot have confidence

1. For example, Resolution CX of the Eighth International Conference of American States approved in Lima December 24, 1938, Art. 3. Carnegie Endowment for International Peace, International Conferences of American States, First Supplement, 1933-1940. Washington, D.C., 1940. p. 309.

in the military forces, small in number, lacking the necessary materiel, as an element which could decide the fate of the Republic in an armed conflict." 1)

After the protocol was signed and awaiting ratification Col. Ricardo Astudillo, Commander of the National Defense Forces, admitted to Col. Pate, the U.S. Military Observer, that the Ecuadorean Army was in a state of almost complete disorganization and was unable to resist any attack. Col. Pate reported, "He admitted that many sectors of public opinion did not like the protocol but they had little understanding of the truth, for as a matter of fact Ecuador had never occupied a great deal of the Oriente to which it had laid claim, and while outstanding international lawyers had been developed in the centers of the country, no pioneer had ever gone forth to the jungle to conquer it, so that after all the settlement was not so bad for Ecuador.... If the Rio Protocol were not ratified by the Congress, it would be a national disaster, as the government had no army worthy of the name to defend its interests...." 2)

The two houses of the Ecuadorean Congress voted on the ratification of the protocol between February 23 and February 26, 1942. Approval was authorized by a vote of 26 to 3 with five abstentions in the Senate and by 43 to 9 with three abstentions in the Chamber of Deputies. The executive decree of ratification was issued on February 28, thus completing the procedure within the 30 day period prescribed by the protocol. The Peruvian Congress approved the protocol on February 26 and the decree of ratification was issued by President Prado the same day. 3)

Peruvian forces were withdrawn from all but a few scraps of Ecuadorean territory by February 11, thereby substantially complying with the protocol's terms. Arguments over disputed border areas in the coastal zone

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1. Tobar, Invasión peruana, p. 431.
 2. Wood, Aggression and History, p. 172 quoting Emb. Quito's D-2617, 2-16-42.
 3. Pérez Concha, Ensayo, 2d ed. Vol. II, p. 335-337.

delayed exchange of ratifications until March 31, when this step was completed in Rio de Janeiro with great formality in the presence of President Getulio Vargas, Foreign Minister Aranha and the diplomatic representatives of the other guarantor powers. On the same day, in Quito, President Arroyo del Río accepted the resignation of Julio Tobar Donoso as Foreign Minister of Ecuador. He had discharged his responsibilities to the best of his ability for nearly four hectic years and now had to await the slings and arrows of outrageous fortune as a private citizen.

Boundary Demarcation Procedures

The Rio Protocol itself did not set forth in detail the procedures to be followed in actually determining the geographical location of the line. Article IX stated merely that the boundary would be determined in accordance with the preceding article by technicians on the ground. For once, however, both sides were able to agree on how to get started. Each appointed two boundary commissions, one each to work in the west, from the Pacific to the Andes, and the other two in the east -- the Oriente which had been the principal bone of contention between Ecuador and Peru. The Ecuadorean and Peruvian commissioners for the western sector met on the Zarumilla on June 22, 1942, and the eastern sector groups met at Iquitos on July 28. In addition, each of the guarantors appointed a technical advisor who was supposed to assist in the work of determining the location of the boundary; the United States advisor was Dr. George M. McBride, whose final report, completed in 1949, is a prime source for the procedures and problems faced by the boundary commissions. 1)

Dr. McBride made it clear in his report that the actual role of the technical advisors proved to be quite different from that envisaged when they were appointed; instead of accompanying the commissions in the field and giving them "technical" advice, the advisors were

1. Dr. McBride's report was summarized in the memorandum of March 18, 1953, prepared by Marjorie Whiteman of the Legal Adviser's office in the State Department.

only called upon to function when the commissioners themselves were unable to agree. Consequently, while a knowledge of surveying and cartographic techniques was obviously essential, the technical advisors acted more as referees or mediators than as technical experts.

The commissions did cover the ground and, as locations were agreed upon, they set up markers ("Hitos") at strategic points with the latitude, longitude and elevation above sea level marked on them and the names "Peru" and "Ecuador" on the sides facing the respective countries. A written record of each placement was to be drawn up and signed by the presidents of the two commissions. In case of disagreement, statements of the circumstances were to be reported back to the governments, and the technical advisors after appropriate consideration were to agree upon a recommendation which they would forward to their governments which would presumably take up the matter through diplomatic channels. The procedures were clearly designed to respect the sovereignty and equality of both parties, and as a consequence they were extremely cumbersome and required a great deal of time to work out, especially when the inevitable discrepancies between the parties arose. Perhaps in the circumstances it is remarkable that almost all of the boundary was successfully demarcated in a relatively few years.

Another deviation from the intended operation of the system became apparent as relations between Argentina and the United States steadily deteriorated during the '40s due to Argentina's reluctance to take any meaningful stand against the Axis powers during the war. Friction reached such a point that Argentina was excluded from the Chapultepec Conference of American States in 1945 which was to lay the ground work for the post-war inter-American system. In these circumstances the mediators could not, or, at any rate, did not function as a body, and Brazil, as the only Amazonian power among the four, stepped in alone to fill the gap. We have already noted Aranha's initiative in December 1941 in proposing a boundary settlement without consulting the other mediators, and this role was continued for many years during and after World War II with the tacit acquiescence of the others.

The Western Sector Demarcated

It will surprise no one that the Ecuadorean-Peruvian commissions (sometimes referred to in the singular as the Mixed Commission) were unable to agree on numerous points. The line in the west was mostly in inhabited country and had been recognized de facto for some time. As all the points of dispute have now been cleared up, we need not tarry long over them. The principal source of contention was determining the proper mouth of the Zarumilla from which the boundary should start and then whether an old bed or a new bed should be followed. Other geographic features were also in dispute, but the areas involved were small in all cases.

As early as December 1942 Ecuador requested the guarantors to set up procedures for resolving contested points and in March 1943 made a formal request for the guarantors to assist. Due to the war and the tense political relations between the United States and Argentina, the guarantors suggested that Brazil should conduct an investigation and submit its recommendations to the others.

Foreign Minister Aranha dispatched Navy Captain Braz Dias de Aguiar, head of Brazil's cartographic service and, according to Perez Concha, a scientist favorably known throughout the continent. 1) Dias de Aguiar visited the frontier areas in the west and, after returning to Brazil, made his report which was accepted by his own government and by the other guarantors and officially transmitted to the parties on May 17, 1944. Dr. McBride noted that although this was not the procedure contemplated by the Rio Protocol, it seemed to be working well and was more in line with the preferences of Peru, which still wished to avoid the appearances of mediation. 2) Ecuador and Peru accepted the recommendations of Dias de Aguiar and exchanged notes to this effect on May 22, 1944.

The solution proposed adopted the Peruvian thesis as to the proper channel of the Zarumilla River to form the boundary, a decision which, according to Ecuadorean

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1. Ensayo, 2nd ed. Vol. II, p. 357.
 2. Whiteman memo, p. 20.

writers, meant that certain Ecuadorean villages were cut off from their water supply. However, in two instances the decision followed the Ecuadorean contention and clipped off salients which the Peruvian interpretation would have thrust into Ecuador. 1) Ecuador's Foreign Minister at the time, Francisco Guarderas, calculated that Ecuador had gained much more territory than it had lost, but such was not the opinion of the general public.

It happened that this decision was published first in Peru and in terms which made it appear a Peruvian triumph. Ecuador was approaching presidential elections, and public opinion was in a state of feverish excitement. The announcement of the acceptance of the Brazilian recommendation was greeted with a storm of popular fury; on May 28 the Guayaquil garrison declared itself in revolt and, being joined by the bulk of the military, forced the resignation of President Arroyo del Río. After a brief period when the country was under a Political Bureau, José María Velasco Ibarra became president of Ecuador for the second time.

Despite the unpopularity of the Rio Protocol, the Political Bureau hastened to state that Ecuador would respect all treaties in force and especially the treaty of Rio de Janeiro between Ecuador and Peru. Later, on June 12, 1944, Velasco Ibarra, one of the most vehement opponents of the Rio agreement, stated for publication in El Comercio that, as he had said on several occasions, he would respect the agreement made by Ecuador in Rio de Janeiro. Finally, Dr. Camilo Ponce Enríquez, Velasco's Foreign Minister, said a few days after assuming office, "The Rio Protocol is an accomplished fact, and Ecuador will respect that international agreement." 2) So the Rio Protocol survived its first change of government.

1. Pérez Concha, Ensayo, 2d ed. Vol. II, p. 363 has a map showing the disputed zones and the Brazilian solution. Unfortunately this book is very hard to find.

2. Pérez Concha, Ensayo, 2nd ed. Vol. II, p. 366-367.

Unquiet on the Eastern Front

While a definitive settlement was being achieved in the western sector, albeit at the cost of overthrowing the Ecuadorean government, problems of a more complex nature were arising in the east, generally referred to as the Oriente. The task of delimiting a boundary in this region was of course extremely difficult. It consisted largely of dense rain forest traversed by no roads and accessible only through the great tributaries of the Amazon which had their sources in the eastern range of the Andes.

As has been noted, the Mixed Commission for the Oriente made its headquarters at Iquitos, a long way from the scene of action, and even so the Ecuadorean members of the Commission usually traveled via Peru. The area of the Cordillera del Cóndor was of particularly difficult access; it was considered impossible to draw up a map from ground surveys, so the two parties jointly requested the United States to produce an aerial map of the region, a task which the U.S. Air Force undertook. The cloud cover in this area was so constant and dense that the mapping frequently had to be done by radar and other then novel techniques.

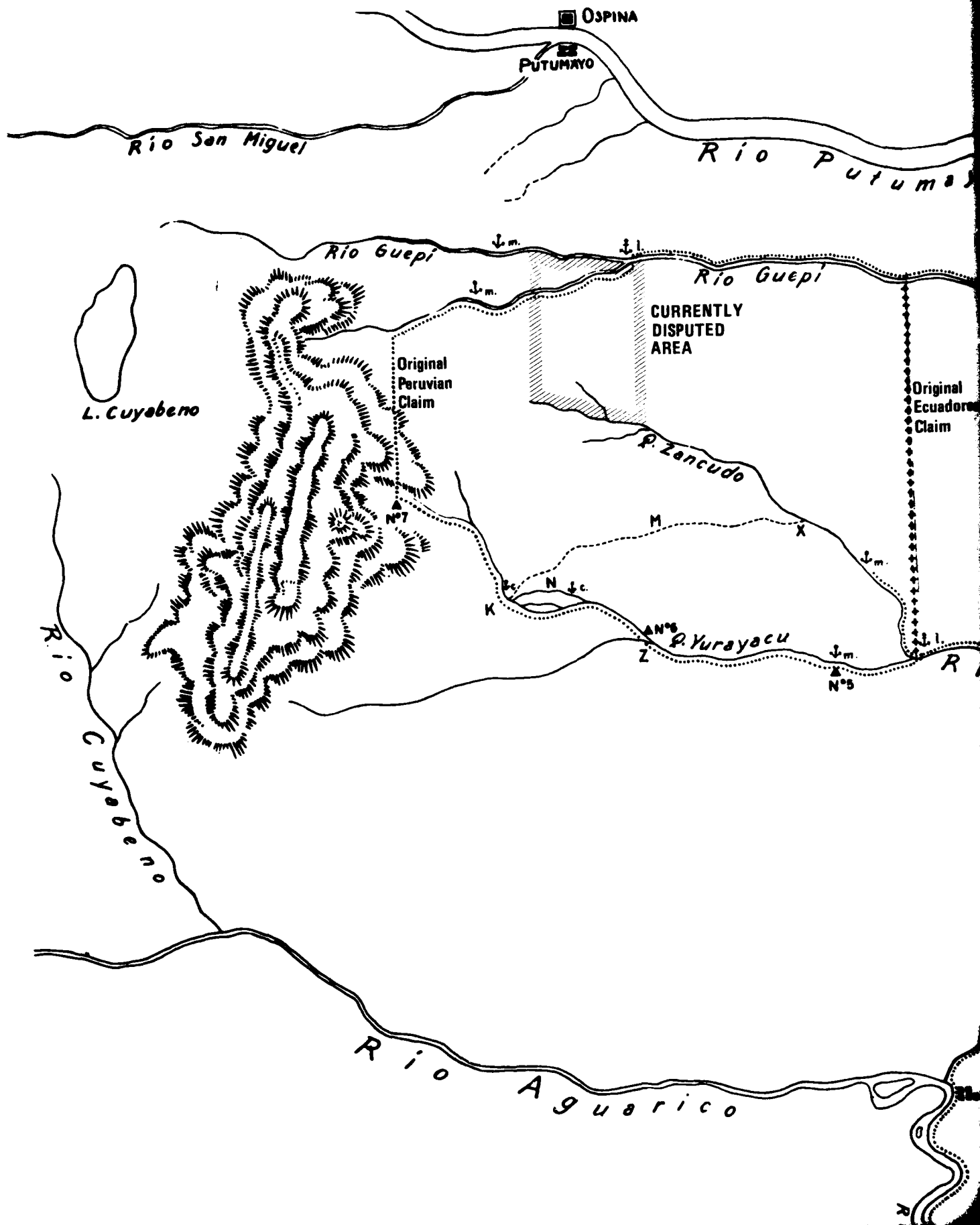
As originally understood, the major problem arose from the fact that the low ridge known as the Cordillera del Cóndor did not run in a northeasterly direction as the drafters of the Rio Protocol had thought. They had agreed in Article VIII-B-1 that the boundary should follow the watershed between the Zamora and the Santiago Rivers from the Quebrada de San Francisco to the confluence of the Santiago with the Yaupi River. However, it was subsequently learned that the ridge ran in a due northerly direction and ended near where the Zamora joins the Paute to form the Santiago. Peru proposed that the line run north to the juncture of the Zamora and the Paute and then down the Santiago to the confluence of the Yaupi, but the Ecuadorean team objected that this would be contrary to the terms of the protocol; besides, it would deprive Ecuador of some 200 sq. miles of additional territory. This problem was referred to the guarantors -- in effect to the Brazilian Foreign Office -- along with the various disputes affecting the western sector. At this stage no one questioned that the Cordillera del Cóndor was the watershed between the Zamora and the Santiago.

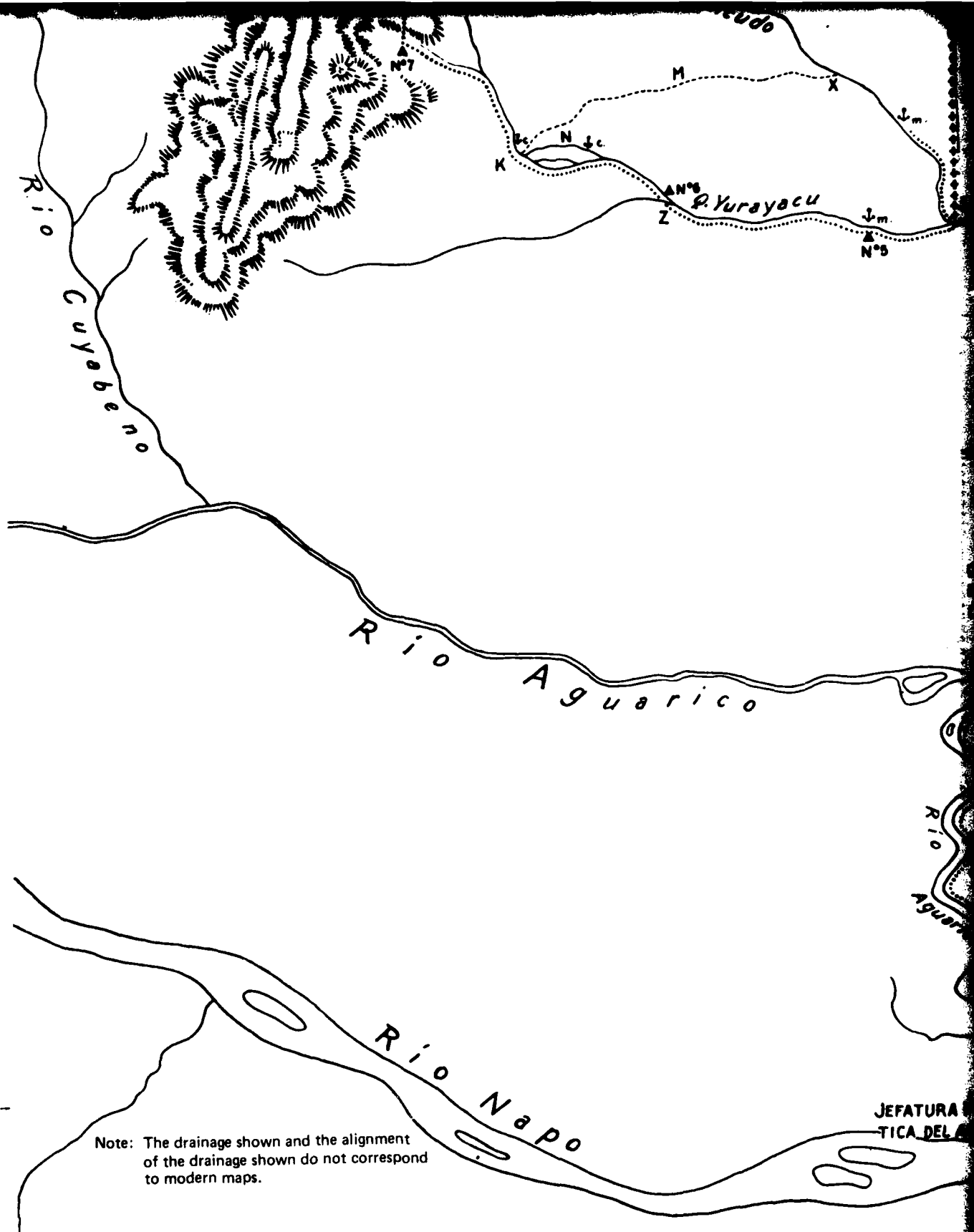
A second dispute arose over the location of the boundary in the far north, near where it was to join Ecuador's boundary with Colombia on the Putumayo River. The Rio Protocol in Article VIII-B-6 stated that the boundary should follow the Lagartococha River to its source. Inspection on the site revealed that the Lagartococha was formed by the union of three branches: the South, Central and North Forks (Quebrados Sur, Central and Norte or Zancudo). The Ecuadorean position was that the Lagartococha River had its origin at the point where the three branches met; hence, the line should be drawn straight from there to the Güepí, a tributary of the Putumayo. The Peruvians, on the other hand, claimed that the South Fork was the proper continuation of the Lagartococha, and hence the boundary should be drawn from its source to the Güepí; naturally each side had adopted the interpretation which would give it the most territory (see map following p. 129). This dispute too was referred to the guarantors for settlement.

When the guarantors' recommendations were presented to Ecuador and Peru in May 1944 by the Brazilian Ministry of Foreign Affairs, no decision was made on the two eastern disputes; rather it was stated that those differences would be resolved in accordance with a solution to be handed down by Braz Dias de Aguiar after an inspection in loco. In accepting the determination for the western sector, the two parties in their notes of May 22 agreed that Capt. Braz Dias de Aguiar should be empowered to resolve the two differences "of a technical character" in the eastern sector of the boundary. 1)

Pursuant to this authority Captain Aguiar visited the eastern sector and on July 14, 1945, turned over his decision to the parties. Perhaps because of the inaccessibility of the terrain, Aguiar's investigation proved to have been superficial and his decisions were defective in both cases. At this point in time it is not clear why Aguiar was brought in on the case when the technical experts of the guarantors, in any case

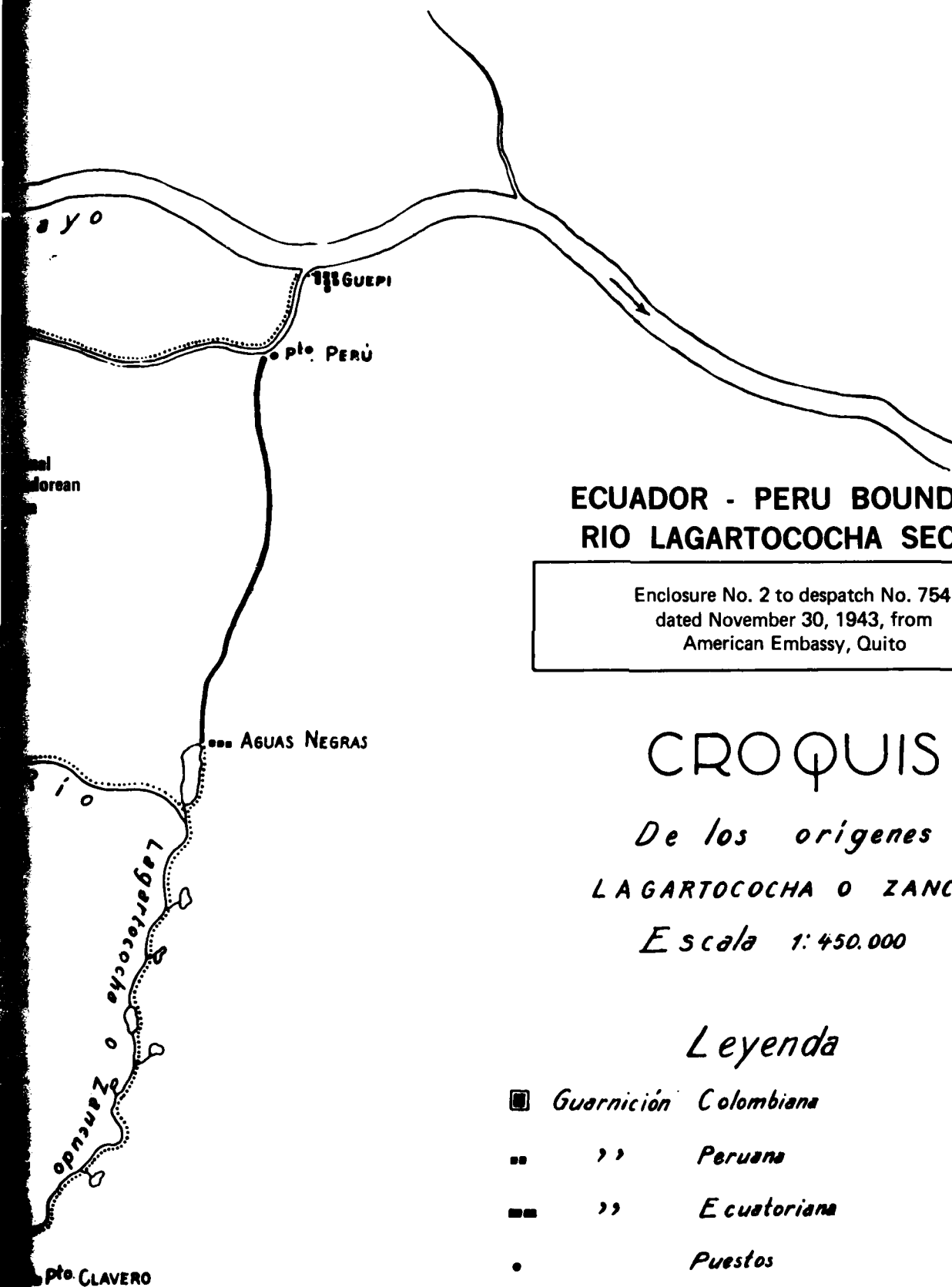
1. Pérez Concha, Ensayo, 2nd ed. Vol. II, pp. 363-366.





Note: The drainage shown and the alignment of the drainage shown do not correspond to modern maps.

3:



ECUADOR - PERU BOUNDARY: RIO LAGARTOCOCHA SECTOR

Enclosure No. 2 to despatch No. 754
dated November 30, 1943, from
American Embassy, Quito

CROQUIS

De los orígenes

LAGARTOCOCHA O ZANCUDO

Escala 1:450.000

Leyenda

■ Guarnición Colombiana

.. " Peruana

== " Ecuatoriana

• Puestos

▲ Estaciones Astronómicas

+++++ Trazado de la recta S-N

ECUADOR - PERU BOUNDARY:
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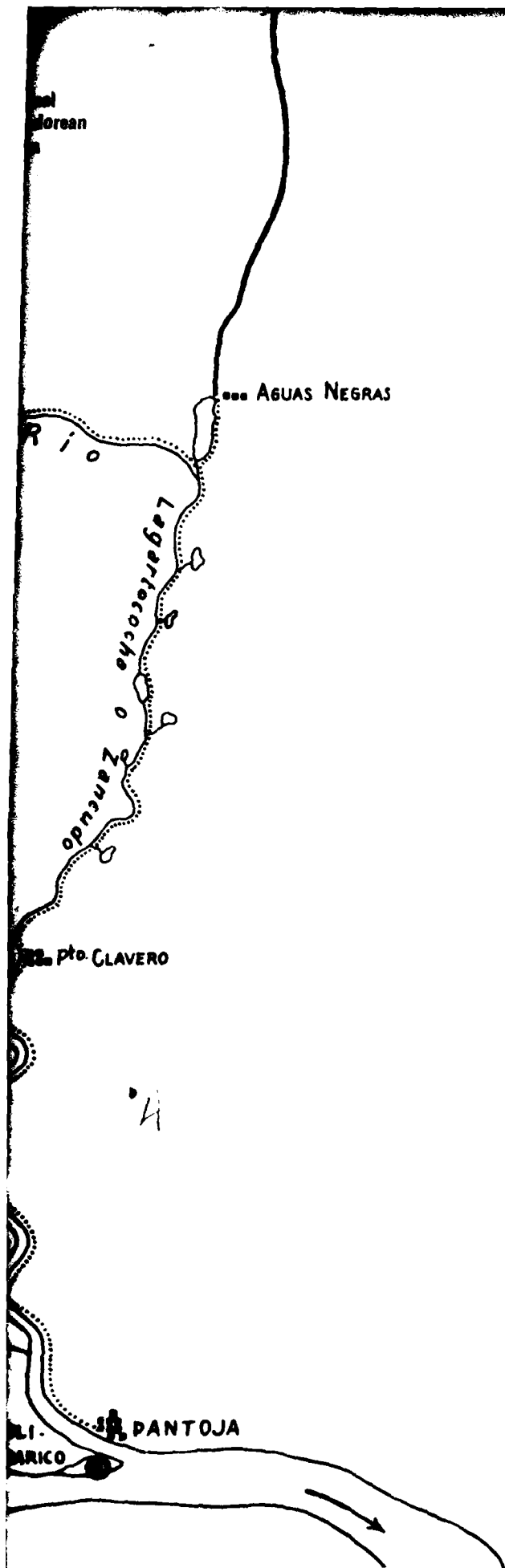
LAGARTOCOCHA O ZANCUDO

Escala 1:450.000

Leyenda

- *Guarnición Colombiana*
- *Peruana*
- *Ecuatoriana*
- *Puestos*
- ▲ *Estaciones Astronómicas*
- +++++ *Trazado de la recta S-N*
- *Camino de montaña*
- - - - - *Bifurcación falsa*
- *Recorrido por los Presidentes de la C.M.D. de Límites*
- ∇ c. *Navegación en canoa*
- ∇ m. *motor*
- ∇ l. *lancha cañonera de 4 pies de calado*
- ◎ *Jefatura Política del Aguarico*

Iquitos Setiembre de 1943



Dr. McBride, were on hand. It may be that Brazil was the only one of the guarantors which, at this period, was willing to assume responsibility for what was sure to prove an unwelcome decision to one or the other party, and quite possibly to both.

In the Cordillera del Cóndor (Santiago-Zamora) area, Aguiar addressed himself primarily to ascertaining the boundary between the northern end of the Cordillera del Cóndor and the confluence of the Santiago and the Yaupi; like everyone else at the time, he assumed that the Cordillera del Cóndor was in fact the watershed between the Zamora and the Santiago. Aguiar ruled that the boundary should follow the Cordillera to the point where, it appeared from the map, a spur branched off in the direction of the mouth of the Yaupi. This spur should be followed as far as it went, and, if it did not reach the Santiago, then the line should be established on the watershed between those streams which flowed north into the Santiago and those which flowed east and entered the Santiago below its confluence with the Yaupi. Both parties accepted this decision.

While Aguiar did not address himself specifically to the area which was to become the most critical in the whole boundary, he laid down principles which were clearly applicable to it. As to his general approach, he quoted from Accioly's Public International Law the principle that, if the literal sense of the wording (of a treaty) is contrary to the objective set forth in the treaty, that sense should not exclude the broader interpretation necessary for the attainment of that objective. Applying this concept to the Santiago-Zamora sector, he concluded, "The obvious intention of the Protocol is that of running the boundary line from the San Francisco River to the confluence of the Yaupi with the Santiago, along the most direct and easily recognizable natural line." In the same context Aguiar wrote, "The interpretation given by the two governments, immediately after signing the Protocol,... was that the boundary should run directly from the San Francisco to the mouth of the Yaupi, without passing through the Zamora confluence." 1)

1. The text of the Braz Dias de Aguiar's award is found in translation as annex C to the Whiteman Memorandum of 3-18-53; the above quotes are found on page 23 of Annex C.

In the Lagartococha sector, Aguiar's problem was to determine the origin of the Lagartococha River, also known as the Zancudo. To reach his decision he measured the flow of the three forks which united to form the Lagartococha. The tributary with the largest flow was North Fork, likewise called the Zancudo, and Aguiar ruled that this fork should be the boundary. To his award he attached a map, showing the line proceeding due north from the source of the North Fork the few kilometers needed to reach the Güepí. This decision, which placed the boundary neatly between the extreme claims of the two parties, was also accepted.

However, when the Mixed Commission actually entered the area on foot, they learned that the source of the North Fork was located approximately nine kilometers west of the point indicated on the map attached to Aguiar's award. (Ecuadorean writers refer to this extension to the west as the Quebrada Occidental or West Fork, thus creating a difference between the fork designated by Aguiar and the source discovered by the Mixed Commission.)

The binational group on the spot agreed that the newly discovered branch was indeed the origin of the North Fork and placed markers accordingly, running the trace due north to the Güepí. The new line, further to the west, would have cost Ecuador something over 50 sq. kms. of totally uninhabited land, 1) and as soon as this came to the notice of the Foreign Ministry, the president of the Ecuadorean Commission was hastily replaced and his successor instructed not to sign the documents confirming officially Ecuador's acceptance of the markers as placed.

The issue was clearly drawn: whether the wording of Braz Dias de Aguiar's award was governing or the map on which he had indicated the boundary. Both sides separately appealed to Aguiar, presenting the debatable points in a manner to support their own contentions. On September 23, 1946, the Ecuadorean Minister in Rio de Janeiro solicited Aguiar's opinion and received the reply -- somewhat contradictory -- that Aguiar had determined the North

1. Pérez Concha says 79.8 sq. kms.

Fork to be the continuation of the Lagartococha River and that the line to the Güepí should proceed from its source; but he also said he had followed the 1943 map given him by both branches of the Mixed Commission and that they should not go around looking for another source for the North Fork than that which he had indicated on that map. 1)

In December 1946 the Peruvians made their presentation to Aguiar and on January 13, 1947, Aguiar made a more formal report in which he confirmed his intent to designate the source of the North Fork as the point of departure for the Güepí and stated that he had now concluded that the true source was that discovered by the Mixed Ecuadorean-Peruvian Commission in the course of its work in 1945-46. In a note transmitted to the Ecuadorean Ambassador on January 23 by the Brazilian Foreign Ministry Aguiar explained that in his reply to the ambassador in the previous September, he had been using the documents available to him at the time the award was made; now, however, in the light of the fact that the Ecuadorean president of the Commission had signed the papers regarding the discovery of the new source, he had concluded that it was the correct point of departure for the straight line to the Güepí. 2)

The Ecuadorean government hotly denied that Aguiar had any authority to modify his original opinion. Nevertheless, Dr. McBride in his Final Report concluded that the Rio Protocol clearly specified the source of the Lagartococha and that to ignore an established geographic fact would create a vicious precedent; he considered the Ecuadorean contention without merit. 3) As if to mark his definite withdrawal from this tedious controversy, Captain Aguiar died on December 17, 1947.

The U.S. Air Force Drops a Bomb

Just as the Lagartococha controversy was beginning to agitate the spirits of Ecuadoreans and Peruvians,

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1. Pérez Concha, Ensayo, 2nd ed. Vol. II, pp. 372-373.
 2. Pérez Concha, Ensayo, 2nd ed. Vol. II, pp. 374-376.
 3. Whiteman Memorandum, pp. 47-55.

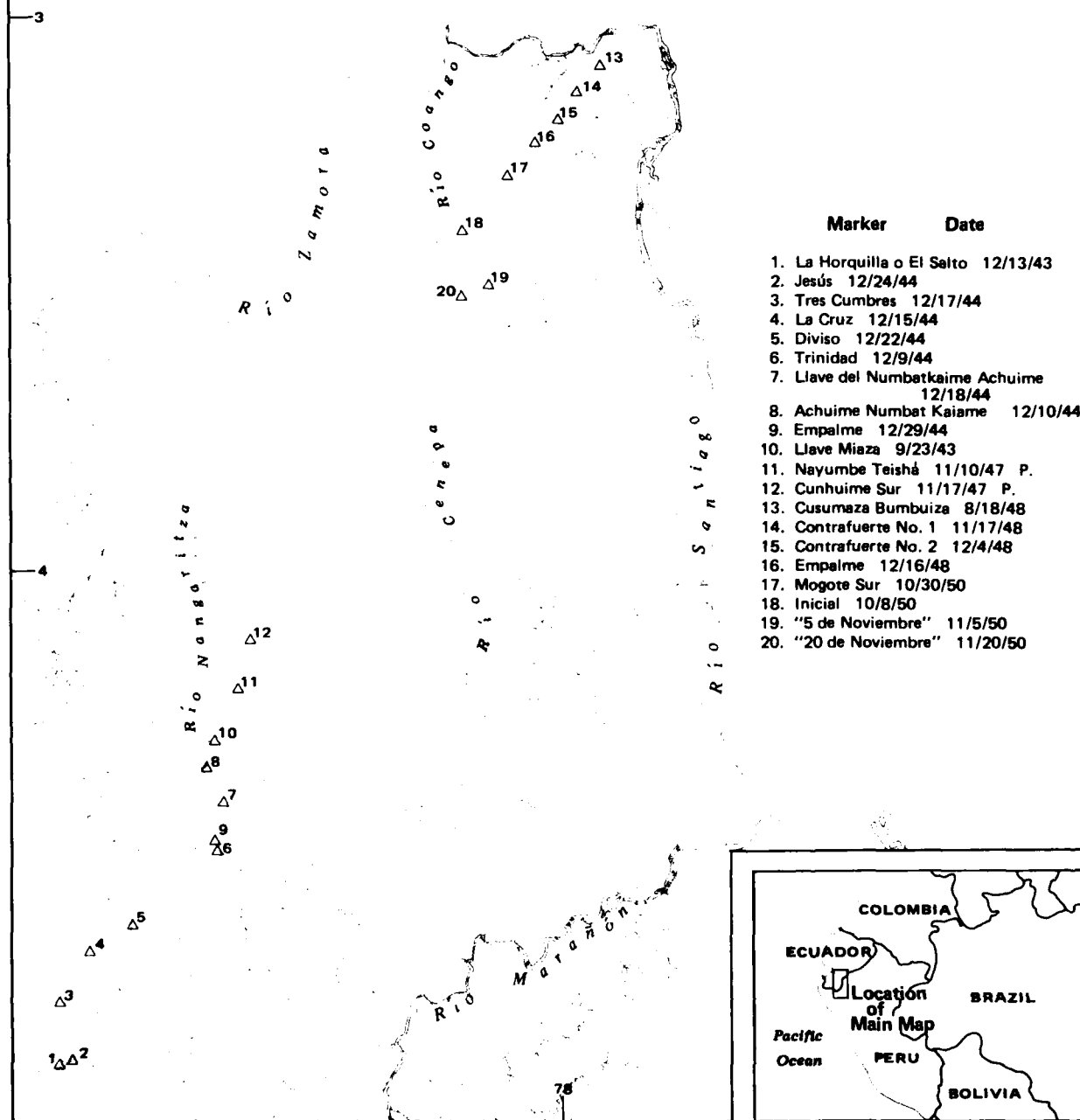
the U.S. Air Force completed the aerial survey of the Santiago-Zamora region, and the resulting maps were delivered to the Foreign Ministries in both countries by the respective American Embassies on February 27, 1947. In press releases heralding the event, the difficulty of the task was highlighted: the completion of the survey had required from January 1943 to October 1946 because the area was almost continually shrouded in mist. The release pointed out that the region was virtually unexplored, having mountain peaks of unknown altitude which were constantly covered with clouds; in preparing the maps two aircraft and 14 men had been lost.

The maps had the effect of time bombs; at first nothing happened, but after more than a year the Ecuadorean Foreign Office in September 1948 ordered the Ecuadorean Commission to stop work in the Cordillera del Cóndor since the map showed that there was no single watershed between the Zamora and the Santiago Rivers. Between the two lay the Cenepa River, which, if not exactly unknown before, was shown on maps as a very short stream, 1) whereas aerial photography revealed that it ran between the Zamora and the Santiago for 190 kms. from its source in the Cordillera del Cóndor to its mouth in the Marañón (see map following page 133). The Cordillera del Cóndor ran between the Zamora and the Cenepa and hence could not, as had previously been supposed by both sides, be the watershed between the Zamora and the Santiago. This meant that the phraseology of the Rio Protocol could not be literally applied, and it is this circumstance which has threatened the permanency of the whole border settlement.

The problem created by the non-existence of the watershed was clearly of a completely different order of magnitude from the points at issuance in the Lagartococha sector, although for several years the two received approximately equal attention. In Lagartococha, the

1. For instance, maps distributed in 1937 by the Ecuadorean Legation in Washington during the negotiations did not show the Cenepa at all. Other rivers were shown in quite different locations from those now determined.

ZAMORA - SANTIAGO ZONE



question was whether the language of the protocol and that of the Aguiar arbitral award should be determining or whether Aguiar's line on a defective map should govern.

The divergence on Santiago-Zamora was far more fundamental: if the terms of the protocol were inapplicable in that sector, what effect would this have on the other provisions of the agreement? If the protocol was impossible to execute in part, was the remainder also inapplicable? Such questions have been asked ever since 1949. They have not been answered to the satisfaction of both parties to this day, and the boundary as laid down in the Rio Protocol has not yet been delimited in either sector.

The area involved in Lagartococha is small and, so far as is known, valueless; the drawing of the line in the Santiago-Zamora region, on the other hand, appears to the Ecuadoreans to offer the possibility of access to the Marañón, a matter which has assumed life-and-death proportions in the minds of many Ecuadoreans and one which Peru regards as affecting its national security. From the U.S. point of view, it is important because our responsibilities as a guarantor will not cease until the boundary settlement is complete, and as long as the boundary is unsettled, it remains a potential source of conflict between two American States with both of which the United States desires to have cordial relations.

Efforts to Continue Boundary Delimitation

In the interval between the Aguiar decision of 1945 and the Ecuadorean discovery of the dual watershed in the Santiago-Zamora sector, work had continued in an effort to survey the line which would form the boundary in that area; work on Lagartococha ceased with the refusal of Ecuador to sign the final documents despite the fact that markers had been emplaced. Following Aguiar's instructions, the line was marked westward from the Santiago-Yaupi confluence to the northern end of the Cordillera del Cóndor, and a marker was placed there called "20 de Noviembre." Approaching from the Quebrada de San Francisco on the south, two markers were placed on the Cordillera del Cóndor, the most northerly of which was named "Cunhuime Sur". This left an unclosed gap of about 49 miles or 78 odd kilometers which still (1979) awaits delimitation.

The Ecuadorean tactic in the succeeding years has been to delay a settlement of this issue until, by some stroke of fortune, Peru could be induced to alter the provisions of the Rio Protocol to permit Ecuador an outlet on the Marañón, however small and however limited in practical advantage. Peru has feared that any alteration in the protocol would reopen the whole boundary question and has adamantly refused to admit that any problem exists in the Santiago-Zamora region which was not covered either by the protocol or by the Dias de Aguiar award of 1945.

The Peruvian contention that no problem exists has on occasion been carried to the point of appearing ridiculous, since the fact that there is no single watershed between the Santiago and the Zamora obviously does raise a problem, and Ecuador's insistence on a re-negotiated settlement also creates a problem. However, the Peruvian position is relatively defensible in contrast with the Ecuadorean attempts to parlay this geographic anomaly into access to the Marañón which was clearly not included in the protocol and which the Peruvians had repeatedly and specifically denied in the course of the negotiations.

If a solution were to be derived from the legal documentation, it would seem to be in the almost casual sentence in Aguiar's 1945 award, which stated that the line should follow the Cordillera del Cóndor, or, if this were not feasible, then "the most direct and easily recognizable route." The summits of the Cordillera del Cóndor appear, from the map at least, to provide the simplest and most feasible way for closing the gap and the one most nearly in accord with the intentions of the signers of the Rio Protocol.

The solution appeared so obvious in 1947 that the aerial map handed over to the Ecuadoreans and Peruvians showed a line running along the Cordillera del Cóndor and closing the gap. Peru adopted this line as its own proposal for determining the boundary. In April 1952 the Ecuadorean Chargé in Washington requested the Department to confirm that the line which appeared on the map published in Lima was for the guidance of the Mixed Commission and did not pretend to carry out the Rio Protocol. The State Department ascertained that the map published by Peru was authentic but did not learn who had drawn the line on it or why. The Ecuadoreans were assured that the aerial survey was designed to facilitate the

work of the Ecuadorean and Peruvian experts and was not intended to indicate the location of the actual boundary.

The delay of the Ecuadorean government in taking action after the aerial map revealed the disparity between the language of the protocol and the geographical reality was probably, as so often in the past, due to domestic political instability. In August 1947 President Velasco Ibarra was overthrown by the Army and caretaker governments headed by Mariano Suárez Veintemilla and Carlos Julio Arosemena Tola held office until Galo Plaza Lasso was elected president and assumed office on September 1, 1948. He named as his Foreign Minister Dr. Neftalí Ponce Miranda, an outstanding authority on the boundary question.

Ponce lost no time; 21 days after taking office he instructed the president of the Ecuadorean boundary commission to cease work in the Cordillera del Cóndor and not to permit the placement of any more markers because the language of the protocol had been found to be inexecutable. 1) However, work at the northern end of the Santiago-Zamora sector specifically covered by Aguiar's 1945 decision continued until the final marker was set on November 20, 1950. Since then no further markers have been placed.

For reasons not entirely clear the Ecuadorean Foreign Office preferred to pursue the Lagartococha question first, and it was not until September 15, 1949, that Ponce elected to raise formally the Santiago-Zamora question with the Peruvian Foreign Ministry. 2) The Ecuadorean proposal was that a special Mixed Commission be created to carry out a detailed survey of the Santiago-Zamora region to ascertain the true situation of the watershed between the rivers cited in the protocol. The reply came back quite promptly; Peru considered that the demarcation should proceed in accordance with the arbitral award of Braz Dias de Aguiar; that the existing Mixed Commission had available the maps prepared by the U.S. Air Force and hence the appointment of a special commission was

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1. Pérez Concha, Ensayo, 2nd ed. Vol. II, p. 391.
 2. There had apparently been some oral discussions previously. Cf. Pérez Concha, 2nd ed. Vol. II, p. 393, but the dates appear to be confused.

unnecessary; and that the Peruvian government had requested the Brazilian Government to appoint a technical expert to assist the Mixed Commission in the delineation of that portion of the frontier not yet marked out. 1)

Here at this early date one can see emerging the positions which the two disputants were to hold tenaciously for years: Peru asserting that the protocol and the award answered all questions, that the boundary markers which had been placed were final, and that nothing remained but to get on with the work, possibly with some outside advisor. Ecuador, in contrast, asserted that the geographic reality as shown on the Air Force maps should be verified on the ground; should it be established that there was no single watershed between the Santiago and the Zamora, then a new situation would prevail, not contemplated by either the Rio Protocol or Captain Dias de Aguiar, and it would be necessary to negotiate a new settlement.

Much of the verbiage which appeared in later polemics stemmed from the perceived need to maintain these basic principles at all costs. For Ecuador, the annulment of this portion of the protocol would open the way to a possible outlet on the Marañón and the realization of Ecuador's dream of being an Amazonian power. For Peru, the rejection of one clause of the protocol would portend the destruction of the entire boundary settlement and the possible loss of all Peru had gained by diplomacy, by force and by the exertion of her pioneers over the years.

In the circumstances Ecuador saw no recourse but appeal to the guarantors, and this step was taken by notes delivered to the guarantors' diplomatic representatives in Quito on September 23, 1949, explaining Ecuador's position and proposing a meeting of the guarantors. 2) The Ecuador-Peru dispute had once again risen to engage the attention of the United States and its fellow guarantors.

1. Pérez Concha, 2nd. ed. Vol. II, pp. 393-395.

2. Whiteman Memorandum, pp. 31-32.

CHAPTER VIII

INTERNATIONAL PROJECTION OF THE ECUADOR-PERU DISPUTE

The Guarantors Summoned

The multitude of complex problems stemming from the war and the immediate post-war period and the strained relations between Argentina and the United States had inhibited the guarantors from functioning as a group between 1942 and 1947. Consequently, Brazil had been left virtually alone in dealing with the difficulties which arose in attempting to carry out the provisions of the 1942 Rio Protocol: although the 1944 decisions were issued in the name of the guarantors despite their exclusively Brazilian origin, the 1945 award of Braz Dias de Aguiar was, in accordance with terms of the May 1944 agreement between the parties, exclusively the responsibility of Aguiar and his government, which officially communicated its provisions to the parties.

By September 1947 the U.S.-Argentine tension had relaxed to the point that they were able to sit down together in Rio de Janeiro at the Inter-American Conference for the Maintenance of the Peace and Security of the Continent. Somewhat before this time, in March 1947, Ecuador's Foreign Ministry had proposed a meeting of the guarantors on the Lagartococha problem, but this suggestion was received negatively in both Lima and Rio. Peru had just received Aguiar's clarification of his position on Lagartococha which, it will be recalled, supported the Peruvian thesis as to the source of the Lagartococha River; Peru therefore held that the argument had been settled. The Brazilian Foreign Office was annoyed because the Ecuadoreans had made their request public without giving the guarantors time to consider it; it is also possible that Brazilian pride was piqued because the Ecuadorean effort to bring in the other guarantors seemed to indicate lack of confidence in Brazil's sole management of the affair and in Braz Dias de Aguiar, Brazil's leading expert on boundary matters. So the effort to bring the guarantors together failed. 1)

1. Pérez Concha, Ensayo, 2nd. ed. Vol II, pp. 378-379.

The 1947 Rio Conference provided an excellent opportunity for a statement of Ecuador's principles as related to the Rio Protocol. At this meeting the Foreign Minister, Dr. José Vicente Trujillo, pointed out the very real dilemma posed by the requirement that treaties must be observed and the equally undeniable fact that many treaties are unjust or become so with the passage of time. Inter alia, Dr. Trujillo said, "If we declare the sanctity of treaties and close the door on all possible revision by means of juridical procedures notwithstanding the conviction that new political and economic circumstances require a new juridical arrangement, we will be maintaining an injustice which may, in time, be the cause of a disturbance of the peace." 1)

Here we find an early enunciation of a principle which became the leit motif of Ecuadorean foreign policy in the succeeding years. Ecuador made every effort in inter-American gatherings, and especially at the Second Special Inter-American Conference held in Rio de Janeiro in 1965, to create machinery within the inter-American system for the review of treaties regarded by one party as unjust. In this struggle Ecuador was warmly supported by Bolivia and strongly opposed by Chile and Peru. For better or worse, too many states in the Western Hemisphere had profited by agreements imposed on their weaker neighbors for this principle to be accepted. Indeed, the sanctity of treaties was reaffirmed in the Charter of the OAS, drawn up in 1948 in Bogotá, Article XIV of which read, "Respect for and the faithful observance of treaties constitute the standards for the development of peaceful relations among states...."

The Guarantors Begin to Act - Slowly

Although the Brazilian Foreign Office remained somewhat reluctant to let the other guarantors into the act, there was really no way to avoid a meeting if one of the parties insisted. The first meeting of the guarantors as such of which I have found a record took place in Rio on October 27, 1948, under the chairmanship of Raul Fernandes, the Foreign Minister, and was concerned only

1. Pérez Concha, Ensayo, 2d ed. Vol. II, pp. 383-384.

with the Lagartococha phase of the problem. Fernandes proposed, and the others accepted, a rather unimaginative plan: that the parties should solve their differences by direct negotiation or, if that failed, submit them to arbitration.

This was not satisfactory to either party. Had they seen any prospect of solution from further direct negotiations, it would have not been necessary to resort to the guarantors, and neither was disposed to arbitration. Ecuador considered that the matter had been arbitrated once and could not be arbitrated again. Peru agreed that the question had been arbitrated and a perfectly valid decision made; boundary markers had been set in place, and it only remained for Ecuador to sign the final document. Peru asked the guarantors to enforce the Aguiar award as clarified. 1)

With the rejection of the guarantors' first effort, the Department of State took the initiative in suggesting in March 1949 that the Lagartococha dispute be submitted to the International Court of Justice at the Hague for an advisory opinion; the guarantors could then recommend the Court's solution to the parties, thus bringing it within the framework of the Rio Protocol. This idea found no favor with the Peruvians, who objected to submitting an inter-American question to the determination of an extra-hemispheric body. Also, the Argentine government reportedly believed that the guarantors should not confess their inability to deal with the situation. 2)

By April 1950, however, both parties to the dispute were urging the guarantors to meet, and the Department's legal staff was examining more closely the mechanisms for placing the Lagartococha problem before the International Court. The conclusions were these:

1. Neither the guarantors nor the parties could request an advisory opinion from the ICJ; this option was open only to bodies of the United Nations.

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1. Pérez Concha, Ensayo, 2d. ed. Vol. II, pp. 391-392.
 2. Pérez Concha, Ensayo, 2d ed, Vol. II, p. 392.

2. There was no obstacle to the parties submitting the case to the ICJ; the Chamber of Summary Procedure could be used if desired.

3. Multiple precedents from World War II boundary settlements indicated that the text of the protocol, not the map, would be the determining factor. 1)

The Brazilian Foreign Ministry agreed on the advisability of holding a meeting of guarantors and pointed out that the two segments of the boundary in dispute were of entirely different character: Lagartococha involved the legal question of whether the wording of Aguiar's opinion or the annexed map should be binding; it was therefore a good question for juridical determination. Santiago-Zamora in contrast involved a question of geographic realities and would not readily be subject to legal consideration. 2)

When the representatives of the guarantor powers finally met in Rio in September 14, 1950, they succeeded in confusing an already confused situation even further. They quite definitely rejected the United States plan for referring the dispute, or part of it, to the International Court of Justice because of Argentine objections and the known opposition of Peru. Ambassador Vial of Chile argued that Ecuadorean access to the Marañón was at the heart of the matter; if this could be worked out, the other pieces would fall into place.

Although the guarantors had not formally agreed on a precise proposal or defined what was meant by "access" to the Marañón, Foreign Minister Fernandes suggested to the Ecuadorean and Peruvian ambassadors that the boundary should extend down the Santiago river from the Yaupi to the Marañón and from there in a straight line to the Quebrada de San Francisco. The Ecuadoreans were naturally delighted and accepted at once, but Foreign Minister Manuel Gallagher of Peru almost literally hit the ceiling.

1. State Department Memorandum, Myers (L/I) to McGinnis (NWC) 6-2-50. Material regarding the Ecuador-Peru boundary dispute is located in State Department File No. 622.233.

2. Emb. Rio despatch 6-7-50.

He accused the guarantors of conniving with Ecuador for the entire revision of the Rio Protocol and said peace would never come to America unless respect for treaties was enforced. He stressed that Peru would never surrender the right bank of the Santiago to Ecuador, and as if to underscore the point, Peru sent reinforcements to its northern frontier in reaction to reports that Ecuador was massing forces. President Odría, who had participated in the 1941 campaign against Ecuador, made a stirring public address and embargoed the shipment of aviation gasoline from Talara to Guayaquil. Fernandes felt compelled to call in the Ecuadorean Ambassador (and presumably the Peruvian also) to explain that the suggestion had been his own and was not approved by the guarantors. 1)

In view of the rising tension on both sides of the border, and perhaps fearing that the military might again get out of hand, the Peruvian Foreign Office suggested the revival of the device which had worked well with the invasion in 1941: that of sending commissions of guarantor military attachés as observers on both sides of the boundary. The Ecuadoreans accepted the proposal with alacrity, and on October 27, 1950, the guarantors met again in Rio and agreed to set up commissions of military attachés, two from Lima and two from Quito. The mere announcement of this decision calmed the situation; Odría raised the embargo on aviation gas. By the time the attachés made their reports, the need for them had passed. They found no signs of aggressive intentions on either side of the line. The United States favored keeping the attaché commissions in existence for use in future if needed, but Foreign Minister Fernandes was cool to the idea.

How the Guarantors Worked

This first serious effort of the guarantors at assisting the parties to resolve their differences, as required by Article VII of the Rio Protocol, demonstrated several of the characteristics of their procedures which were to continue in succeeding years:

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1. Emb. Lima tels. 10-3-50 & 10-6-50; Lima despatch 10-5-50; Pérez Concha, Ensayo, 2d ed. Vol. II, pp. 399-401.

-- The process of consultation among the guarantors was slow and cumbersome. From the time when the Department of State first formally proposed a meeting of the guarantors on February 6, 1950, until the meeting actually took place on September 14 somewhat more than seven months elapsed. This was despite the fact that both parties had expressed their desire for a meeting in April. The representatives of the guarantors who met in Rio could decide nothing on their own authority; every proposal had to be referred back to the respective Foreign Offices for ratification, and much time was frequently lost in nit-picking. In addition, the minutes of each guarantors' meeting were painstakingly drawn up by the Brazilian Foreign Office and circulated to the other members for their additions or corrections. This frequently resulted in the passage of several weeks although of course the various participants normally informed their home offices of the results by cable.

-- The diplomats in Rio and their governments showed themselves extremely reluctant to take decisions of any significance. The suggestion for referring the Lagartococha dispute to the ICJ was essentially a move to evade responsibility even though the plan had some legitimacy; nevertheless, the legal staffs of the four Foreign Offices were quite capable of reaching sound conclusions on the juridical issues involved.

-- The guarantors were especially reluctant to take any decision which would not be acceptable to either of the parties. This resulted in a series of wishy-washy proposals which were hastily altered when they encountered opposition from either side. It is true that the wording of the protocol lent itself to this kind of indecision since the guarantors were not empowered, in the absence of a separate agreement, to act as arbitrators; Article VII stated that any doubts or disagreements should be resolved by the parties with the assistance of the guarantors (Emphasis supplied). From a legal point of view the guarantors were quite correct to offer suggestions which the parties were free to accept or reject, but on occasion the use of the guarantors' not inconsiderable moral authority might have obtained more results.

-- There was a distinct tendency on the part of the guarantors to play favorites as between the parties in dispute. The same guarantor sometimes had a different favorite with the ebb and flow of bilateral relations,

but generally Argentina tended to favor Peru and Chile, Ecuador. Since the guarantors operated on the basis of unanimity, it was easy for one member to hold up action conceived of as disadvantageous to one or the other party, increasing the delay and the tendency to "water down" all proposals to the lowest common denominator. Argentine rivalry with Brazil and extreme sensitivity to any slight, real or fancied, also tended to complicate the guarantors' operations.

-- One very favorable development from the first joint action by the guarantors was the renewed evidence of the effectiveness of appointing military observers to visit sites of incidents or reported threatening troop concentrations. Subsequent events proved repeatedly that the intelligence reports received by both sides were wildly exaggerated, but no matter how often the reports were shown to be inaccurate, both sides continued to give them credence, or at least were afraid not to take precautions. The news that neutral observers were hastening to the trouble zone was usually enough to calm excited spirits and avert the danger of an armed clash which might escalate.

The increased tension between Ecuador and Peru provided many opportunities for action both by the guarantors and the commission of military attaches during the early 1950's. In March 1951 Ecuador formally requested the guarantors to consider the situation arising from the non-existence of the watershed between the Santiago and the Zamora, and in June of the same year Peru complained that the work of the demarcation commission had been paralyzed and requested that the guarantors intervene to effect the placement of markers along the remaining undemarcated 78 kms. While both sides were urging the guarantors to take action, they were in total disagreement about what action should be taken.

Into this tinder box President Galo Plaza of Ecuador elected to toss a burning match in his address to the Congress on the national holiday, August 10, 1951. He said, "The non-existence of the frontier line in the Santiago-Zamora zone... makes it indispensable that the two governments negotiate and find a frontier line.... For my part, as Chief of State, I must declare that my government cannot accept in this sector a frontier which does not recognize the undeniable Amazonian rights of Ecuador and which does not provide (Ecuador) a sovereign

outlet of its own on the River Marañón." 1) And the Peruvian Foreign Ministry lost no time in replying, "Ecuador must understand that Peru will never consent to give it an outlet on the Marañón, and neither will it permit that the Protocol be flouted since that would amount to despoiling Peru of its legitimate rights to both banks of that river over which Peru has exercised and now exercises its sovereignty, which it will know how to make respected by anyone who pretends to ignore it." 2)

The armed forces on the borders exchanged shots, and public opinion on both sides reached red-hot intensity. President Odría did nothing to calm the spirits by a passage in a speech delivered at Arequipa on August 15: "But let those who should understand understand well, that Peru will demand strict compliance with the Protocol of Peace and Friendship of Rio de Janeiro with Ecuador and will demand it by all methods: by reason and, if that is not enough, the Armed Institution of the Nation will be prepared to carry their war banners to triumph on the field of battle." 3)

Not to be left out, the Ecuadorean Congress adopted a resolution, published in the press on August 21, 1951, stating that the Rio Protocol was signed when Ecuador was suffering from invasion and that it was unjust since it deprived Ecuador of access to the Amazon; since a geographic anomaly had been discovered in the protocol, it was necessary to negotiate a new line which would give Ecuador direct access to the Amazon and thus improve understanding between Ecuador and Peru. Peru's district and municipal councils did their patriotic bit by passing numerous resolutions supporting President Odría's policy vis-à-vis Ecuador.

While the protocol had from its inception been a source of bitterness and rancor between Ecuador and Peru and within Ecuador, the events of 1951 mark its graduation to the level of a major issue in Ecuadorean politics.

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1. Pérez Concha, Ensayo, 2d ed. Vol. II, p. 414.
 2. Pérez Concha, Ensayo, 2d ed. Vol. II, p. 415.
 3. Pérez Concha, Ensayo, 2d ed. Vol. II, p. 416.

It was not an issue in the sense that some Ecuadoreans supported while others opposed it, but an issue in the sense that politicians began to vie with one another to see who could make the most vigorous statements in support of the principle of revising the 1942 boundary settlement. Press and radio were particularly unbridled; opposition politicians recognized but few limitations, and the officials of the government were under continued domestic pressure to adopt ever more extreme positions without bringing on a Peruvian attack or losing completely the support of the guarantors, which was regarded as necessary to restrain the Peruvians.

Both countries accused the other of exploiting the issue for domestic political purposes, and both were to a large extent correct although the issue never assumed quite the importance in Peru that it did in Ecuador since Peru had what it wanted and needed only to sit tight. Nevertheless, Peruvian officials from time to time acted as if they really believed Ecuador might attack Peru. This fear -- genuine or feigned -- was the subject of no fewer than seven memoranda which Foreign Minister Manuel Gallagher handed the ambassadors of the guarantors in Lima during August 1951; he accused Ecuador of planning an attack to get the boundary settlement reopened and concluded his August 24 effort ominously: "This situation cannot continue. Peru will find itself obliged to adopt measures to protect itself...." 1)

As both sides were increasing their armed forces on the border and a real clash appeared possible, Brazil's Foreign Minister, João Neves de Fontoura, informed the other guarantors of his intention to call a meeting on August 29, 1951. As variously reported from Rio and Lima, Fontoura's idea seems to have been that one of the guarantors should be charged with consulting with the parties to the dispute and working out a solution; he suggested either the United States or an eminent American citizen.

The State Department thought the plan had merit but insisted that neither the U.S. Government nor preferably any U.S. citizen be saddled with this responsibility.

1. Emb. Lima despatch, 8-24-51.

When the guarantors met, however, they limited themselves to urging both sides to take measures to prevent border incidents and authorized the Brazilian Foreign Minister to consult with representatives of Peru and Ecuador regarding the possibilities of a direct agreement between them or of recourse to any other method of pacific solution. Months later, when Ambassador Herschel V. Johnson asked Fontoura what action had been taken, the latter replied frankly, "None". He said he had queried the Peruvian Ambassador about bilateral discussions and received a negative reaction; he was still of the opinion that some kind of arbitration would be necessary.

Galo Plaza was succeeded as President of Ecuador on September 1, 1952, by José María Velasco Ibarra, who appointed Dr. Teodoro Alvarado Garaicoa as his Foreign Minister. Although Velasco Ibarra was well known for his opposition to the Rio Protocol, his first acts appeared conciliatory. The Foreign Ministry sent a memorandum to the guarantors proposing that, after hearing both sides, the guarantors should seek a conciliatory formula which would take into consideration, in an equitable manner, the interests of both parties. This suggestion was discussed at a meeting of the guarantors' representatives in Rio on September 17, 1952, but Fontoura reported that the Peruvian Ambassador, who knew of the Ecuadorean initiative, had made it clear that Peru would accept no proposal not based on strict compliance with the protocol, so the guarantors took no action. The State Department, in view of Peru's opposition, also considered the Ecuadorean proposal "impractical".

1953-54: Crises Back-to-Back

The events of 1953-54 were to test the guarantor's ability to act effectively; in retrospect the guarantors may be said to have obtained a bare "pass". In February 1953 an Ecuadorean party consisting of a Lt. Vela and 15 men had an armed encounter with a Peruvian garrison at the confluence of the Curaray and Cononaco Rivers, the details of which were uncertain because of the distance and poor communications. At first the Peruvians said they had captured the Ecuadorean patrol which had penetrated Peruvian territory. Later it was stated that the Ecuadoreans had escaped into the jungle. This gave rise to fears in Ecuador that the Peruvians had shot the entire group since, it was thought, no one could survive on

foot in the jungle. This incident led to heated protests on the both sides.

About the same time the Peruvian Ambassador in Quito, Gonzalo N. Aramburú, became involved in a protocol squabble with the Ecuadorean government which led to an informal request for his recall. The Peruvian Foreign Office, now headed by Ricardo Rivera Schreiber, declined to recall its Quito ambassador, and after a time he was declared persona non grata; the Peruvians promptly declared the Ecuadorean ambassador in Lima, persona non grata, leaving the missions headed by Charges in both capitals.

Given the total disagreement of the parties regarding the facts of the Cononaco incident, they both urged the guarantors to send an investigating team. The meeting of guarantors' representatives in Rio was delayed because the Itamaraty was reluctant to schedule a meeting in the absence of the American and Argentine ambassadors; it was finally held on April 18, 1953, and appointed a Committee of Inquiry to be composed of one military officer from each of the four guarantor countries. The commission was instructed to confine its activities to determining facts and circumstances and not to express opinions on boundary issues. The commission was to meet in Lima not later than May 11. Meanwhile, tensions had been slightly relieved when an Ecuadorean search party on April 1 found the survivors of the February incident painfully making their way back on foot through the jungle. The nearest Ecuadorean outpost was reported to be 400 kms. away.

While both sides and the guarantors were awaiting the report of the investigating commission, Peruvian forces on June 6 fired on an Ecuadorean warplane which was alleged to have violated Peruvian airspace. The Ecuadorean authorities claimed the plane was simply delivering medicine to a border settlement and had not flown over Peru. Rumors of military build-up again became current on both sides; Foreign Minister Rivera told the U.S. and Brazilian ambassadors that Ecuador had mobilized four classes of the army reserve and that Peru would have to reenforce its frontier positions. Peru proposed the formation of a mixed Peru-Ecuadorean commission to examine the western border area; Ecuador agreed but word of this agreement did not reach Lima until July 2 -- nearly two weeks later.

On August 1, 1953, the investigating commission appointed by the guarantors made its report. The report showed careful investigative work and, as might be expected, found some fault on both sides. The report revealed that the Ecuadorean army had sent two expeditions to the Curaray-Cononaco frontier. The first, which reached the frontier in December 1952, was not in uniform and its leader, Lt. Villareal, at first informed the Peruvians that he was a trader but later revealed his military character. The small Peruvian contingent in charge of a sergeant asked for the permit which, according to his instructions, the Ecuadoreans should have obtained from the Peruvian military authorities and which the Ecuadoreans of course did not have. Lt. Villareal explained that his mission was to clear away the brush from the boundary markers and, after cleaning up one marker, he and his men retired upriver. The Peruvians suspected they were attempting to move the marker.

The second Ecuadorean expedition under Lt. Vela had reached the Cononaco frontier on February 27, 1953, and had searched in vain for the marker "Corte Curaray", which the commission concluded had probably been carried away by a flood. At a first cool but correct meeting, the Peruvian sergeant in charge requested Vela to camp upstream until he could receive authorization from his superiors for them to work in Peruvian territory. Vela ignored his request and went about his business. At one moment the canoe with the Ecuadorean party was carried by the strong current near the Peruvian camp, and the Peruvians opened fire. The Ecuadoreans jumped overboard and swam to the opposite bank, and the Peruvians captured their canoe with their supplies and arms and, what was even worse, a draft report by Lt. Villareal revealing that his mission had also been concerned with ascertaining the strength and location of Peruvian forces: the investigating commission found Villareal's report to his superiors "a real job of reconnaissance of the Peruvian post," although no offensive design was indicated. What was even more embarrassing for the Ecuadoreans was the fact that the documents they had given the investigating commission were not identical with the originals found in the canoe by the Peruvians; they had clearly been altered to conceal the intelligence mission of the Villareal party.

The conclusions of the investigating commission were of interest:

- Although Article VI of the Rio Protocol gave Ecuador the same concessions enjoyed by Colombia and Brazil on the northern tributaries of the Amazon, the entry of armed forces into another country was governed by well-known international rules which required prior notice through diplomatic channels.

- Recognizing the need for inspecting and cleaning the boundary markers, the commission thought this should be done by a mixed Peruvian-Ecuadorean group to avoid misunderstandings.

- Exercise of better judgment by both sides would have avoided the incident. The report implicitly censured the Peruvian garrison for firing on the Ecuadoreans without adequate provocation.

- Under existing Peruvian regulations transit on the Curaray was practically closed to Ecuador. The absence of the treaty of commerce and navigation contemplated by the Rio Protocol was unfortunate and would be needed if causes of friction were to disappear. An initiative along this line would facilitate a climate of better relations. 1)

Outside the commission's report the U.S. member, Colonel James R. Hughes, informed Embassy Quito that the Peruvian report of calling up four classes of Ecuadorian reserves was due either to deficient intelligence or had been purposely invented for political purposes. Neither side had large forces on the border. 2)

Following receipt of the investigating commission's report the guarantors directed their major attention to setting up the mixed commission for boundary inspection which had been recommended. The State Department, although feeling that the investigating commission had gone beyond

1. The investigating commission's report is found in State Department's files FW 622.23311 dated 8-1-53.

2. Emb. Quito despatch, 7-23-53.

its terms of reference, was agreeable to the formation of the mixed commissions and to the participation of neutral military observers; Ecuador, however, urged that the military representatives of the guarantors should be fully participating members, not merely observers, while the Peruvians considered that the need for a mixed commission had passed. The Itamaraty called a meeting of guarantors' representatives for September 17, 1953, with the following agenda:

1. Consideration and discussion of the report of the investigating commission;
2. Appointment of a mixed commission;
3. Terms of reference for the mixed commission;
4. Assignment of guarantor observers to the commission.

At the meeting of the guarantors on September 17 it was decided not to release the report of the investigating commission and to call upon the parties to take steps to prevent further incidents. Consideration of the remaining items on the agenda was postponed. The postponed items were to be taken up at the next meeting, but the next meeting was not held until March 15, 1954, nearly six months later, by which time another incident had occurred and troop mobilization was underway.

Once again the guarantors had demonstrated their ineffectiveness in dealing with the Peru-Ecuador problem. Meetings were delayed unreasonably and allowed what should have been minor frontier incidents to escalate to the point where the threat of conflict was very real. The lethargy of the guarantors' operations contrasted sharply with the rapidity and decisiveness with which the Organization of American States had been able to deal with serious international frictions in Central America and the Caribbean. Both the guarantors and the OAS had used the device of investigating commissions to good effect, and this is one plus for the guarantors. However, the delay in creating the commission and the total failure to follow through on its recommendations in a timely fashion nearly allowed the situation to get out of hand.

Towards the end of January 1954 the Ecuadorean garrison at Puerto Rodríguez, eight kms. west of the confluence

of the Güepí and the Putumayo Rivers, captured six unarmed Peruvian soldiers on the south bank of the Putumayo in Ecuadorean territory, where they said they had gone to buy wood. The Ecuadorean government readily agreed to return the soldiers to Peru, and the incident should have been closed, but what followed was a classic example of a diplomatic imbroglio which left both sides looking slightly ridiculous. Ecuador found the language of a Peruvian note offensive and insisted it be withdrawn. Peru agreed provided Ecuador would also withdraw its note, which Peru considered offensive. President Velasco Ibarra flatly refused to withdraw the Ecuadorean note. Foreign Minister Rivera Schreiber became exercised over the delay and accused Ecuador of mistreating the captured men and seeking to create an international scandal.

Meanwhile, up in Washington, Ecuadorean Ambassador José Chiriboga V. was blaming the guarantors for failing to do their duty, and Argentine Foreign Minister Jerónimo Remorino became piqued because he thought the United States and Brazil were acting without consulting the other guarantors; it turned out his staff had not kept him informed of communications delivered to his office. He insisted on calling a meeting of the guarantors, but by this time (February 24, 1954) the Brazilian Foreign Minister and the Argentine and American ambassadors had all left Rio en route to the 10th Inter-American Conference at Caracas so that a meeting was impractical.

President Córdia threatened to close the Ecuadorean frontier unless the prisoners were released by the end of the Caracas Conference; with the usual exaggeration it was reported in Quito that the frontier had been closed, and on March 4 the Ecuadorean Chargé in Washington said Ecuador had closed its frontier in retaliation. Despite the best efforts of Thomas J. Maleady, Chargé d'Affaires of the United States in Quito, the Ecuadorean Foreign Office prepared a hot reply to the offensive and still not withdrawn Peruvian note; Ambassador Tittmann in Lima reported on March 3 that it had been delivered and was "undiplomatic to say the least."

By March 10 Quito received information of massive Peruvian troop and tank concentrations on the frontier and, although this was denied by the Peruvian Foreign Ministry, Ecuador strengthened its frontier posts "only for defensive purposes" and moved its fighter squadron from Quito to Salinas. The mayors of Quito and Guayaquil

called on the people to rally behind the government, and in Quito 1000 university and secondary school students marched to the presidential palace to demand arms for a march against Peru; they were addressed by Velasco Ibarra in person.

On the night of March 15 Interior and Acting Foreign Minister Camilo Ponce Enríquez, addressing a monster mass meeting, called on all Ecuadoreans to form "an insurmountable barrier, be ready to face whatever may come. Let every citizen defend the country, fight for it, know how to die in the fight." 1) A week later, although the Ecuadorean authorities promised to attempt to calm the public hysteria, another huge rally took place while the guarantors' representatives in Quito were conferring with the Foreign Minister. It was again addressed by the President whose fervent oratory was little calculated to soothe excited spirits.

The representatives of the guarantor states finally met in Rio on March 15 and 17, 1954. It was agreed to send public messages to Ecuador and Peru urging them to make an effort to diminish the state of tension between them. The guarantors also decided to request that all prisoners be released and that two military observers from each capital proceed to the frontier. Finally, a message was addressed to both governments stating that neither the incursion of the Peruvian soldiers nor their arrest by the Ecuadoreans showed any sign of hostile purpose and recommending that both sides withdraw their notes. Both sides accepted the guarantors' suggestions, although Ecuador said it was no longer necessary to withdraw the notes. After much to-ing and fro-ing by telegraph, the prisoners were finally delivered in the presence of the guarantors' military observers on Easter Sunday, April 18, at the frontier town of Huaquillas.

This basically insignificant incident serves to illustrate the extreme tension existing between Ecuador and Peru twelve years after the signature of the Rio Protocol had ostensibly settled the boundary question. As might be expected the excitement on the Ecuadorean side was greater, and the manifestations of public support

1. Emb. Quito despatch, 3-15-54.

for his administration were most heartening to President Velasco Ibarra and his Minister of Government, Camilo Ponce Enríquez. The president reacted with the enthusiasm of an old fire horse at the smell of smoke, and the impassioned oratory which sprang spontaneously to his lips heightened further the already exalted temper of the populace. This evidence of popular support undoubtedly remained in Velasco's memory and encouraged him in the future to use the boundary issue as a domestic political resource.

The guarantors had once again made a poor showing although in the end they succeeded in defusing the incident and in persuading the parties to do what they both wanted to do anyway: neither wanted war but both feared to take the first step back from the confrontation. The guarantors had been slow, timid and riven by petty jealousies. There was clearly room for improvement.

Proposals to Improve Guarantors' Operations

On April 20, 1954, after the successful albeit belated termination of the Putumayo incident, the guarantors' representatives in Rio de Janeiro met in a mood of mutual congratulation but of awareness that their functioning left much to be desired. Alberto E. Zalazar, the Argentine representative, said the affair showed that the guarantors' responsibilities extended beyond those areas where the boundary had not yet been delineated and included any boundary incident which threatened to disturb the peace between the two parties to the dispute, and he attributed much of the difficulty in handling the Putumayo incident to the delay between the capture of the Peruvian soldiers in January and the meeting of the guarantors in March.

In Zalazar's view the presence of the Brazilian Foreign Minister and all three ambassadors was not necessary in order to hold a guarantors' meeting, and he politely deplored the "unilateral" efforts to solve the problem which had proved fruitless - an apparent dig at the Brazilians. To insure more rapid action he suggested the formation in Lima and Quito of subcommittees composed of the military attaches of the guarantor powers to investigate immediately any incident either in the capitals or, if necessary, on the spot and inform the guarantors' representatives in Rio through their respective Foreign Offices.

The U.S. representative, Ambassador James S. Kemper, agreed with his Argentine colleague and added the suggestion that a working group be formed in Rio composed of junior officers who would be in close touch with the situation and with each other, would keep their ambassadors informed and make recommendations to them. Such a group, Kemper said, could meet less formally than the Chiefs of Mission but would have no authority to take action. He thought such a procedure would insure the pooling of information and diminish the chance of unilateral action. The chairman, Vasco Leitão da Cunha, reminded the others that the protocol placed responsibility for settling differences on the parties themselves and suggested the guarantors should be careful not to usurp this responsibility. 1)

The State Department appears to have received these proposals affirmatively and made a number of suggestions to insure that the military commissions in Lima and Quito would be firmly under the control of the respective ambassadors. In August 1954 the working group of junior officers was set up and given the assignment of suggesting future guarantor activities. There is evidence that the group remained active for some time and was a useful adjunct to the ambassadors, but further consideration of improvements in the guarantors' procedures was pushed into the background by a political crisis in Brazil which eventually resulted in the elevation of Leitão de Cunha to Foreign Minister. Also, there was another crisis in Ecuadorean-Peruvian relations which absorbed the guarantors' attention for a time.

The Morona incident was virtually a replay of the Putumayo incident in reverse: six Ecuadorean soldiers and a sergeant were seized on May 29, 1954, 30 kms. inside the Peruvian boundary near the Morona River, according to the Peruvians. The Ecuadorean Foreign Minister informed the representatives of the guarantors that the soldiers were "unquestionably" 35 kms. within Ecuador. This time the guarantors' representatives in Rio were able to meet as early as June 12 and, after two additional meetings, recommended that Peru grant safe conduct to the Ecuadoreans and that the details of the delivery be worked out by the military attachés in Lima.

1. Emb. Rio despatch, 4-28-54.

The prisoners were returned to Ecuadorean control at the Peruvian outpost of Vargas Guerra on the Morona on July 9. With the subsiding of the tension the guarantors again lapsed into inactivity, and no progress was made during the ensuing lull either to improve the guarantors' procedures or to find a solution to the basic problem: the unsettled portions of the frontier.

Ecuador Invokes the Inter-American Treaty of Reciprocal Assistance

In August 1955 the next in the long series of crises between Peru and Ecuador occurred - a crisis which for convenience might be called the rearmament crisis. It seems to have originated in the appropriation of some \$2,000,000 by the Ecuadorean government for arms purchases. The Minister of Defense informed Ambassador Sheldon T. Mills that he hoped to use this amount as a down payment for as much as \$20,000,000 worth of military equipment. Reports of the Ecuadorean "shopping around" reached Peru in the usual exaggerated form causing alarm and resulting in Peru's purchase of 12 Hawker-Hunter jets - then a novelty in Latin America - and a tentative move to buy either Canberra bombers from the British or B-26's from the United States. By early September the Ecuadorean Defense Minister told the U.S. Military Attaché that Peru had massed 30,000 men on the border and that he considered the situation more dangerous than just before Peru's 1941 attack. President Odria, on the other hand, informed Charge Clare Timberlake that Peru had only 10,000 men in the entire northern area while Ecuador had 20,000 on its side of the border.

The Department of State became concerned at the rising tension and consulted with the Embassies in Lima and Quito regarding possible solutions. Both field offices agreed that any measures short of solving the boundary problem would do no more than allay tensions temporarily. They pointed out, however, that the views of the disputants were so far apart that no such solution seemed possible at that time. Ambassador Mills hoped that some chance of settlement might arise when Velasco Ibarra and Odria left the presidency in the following year; both had based their political appeal on a strong defense of their respective national positions on the boundary and neither seemed likely to yield. On August 29, 1955, the Department instructed Embassy Rio to propose a meeting of the guarantors, but Charge William C. Trimble found the Brazilian

Foreign Minister most unenthusiastic as he did not see what could be accomplished; he considered the Rio Protocol faulty and thought it impossible to draw a line in accordance with its terms. Both Chile and Argentina, however, supported the request for a guarantors' meeting.

To add to the tension over armaments there occurred another frontier incident of the type which had such great power to arouse the public to a frenzy, especially in Ecuador. Word trickled out of the jungle that on August 10 an Ecuadorean captain and three men in a motor-boat had been picked up near the junction of the Yaupi and the Santiago, held for two days, and then released without their arms, ammunition and documents. Each side stated that the capture had clearly taken place in its own territory.

The Ecuadorean press from extreme right to far left exhausted its vocabulary of vituperation on Peru's transgression. For instance, the socialist La Tierra on September 8: "The guarantor countries of the infamous treaty of Rio are called upon to impose on Peru and its soldiery the observance of freedom of navigation which has been violated within Ecuador's own territory.... The Ecuadorean people must rid themselves of all their political differences, hates and revenges to defend territorial integrity at any cost." The Peruvian press was milder and concentrated on the theme that Ecuador was drumming up a non-existent crisis to bring about the revision of the Rio Protocol.

The affair took on a more serious aspect when José R. Chiriboga V., Ecuador's Ambassador to the United States and representative on the Council of the Organization of American States, delivered a note to the Chairman of the Council on September 8, 1955, invoking the Inter-American Treaty of Reciprocal Assistance, usually called the Rio Treaty. In his note Chiriboga said,

A heavy concentration of Peruvian forces of all kinds, fully equipped with the most modern war materiel, has been noted on the Ecuadorean-Peruvian border, especially in the southwestern section. This concentration has been feverishly increased in recent hours. Vessels of the Peruvian navy are stationed in the vicinity of the Ecuadorean coastline. In other words, Peru is at this very moment engaged in an unjustifiable military deployment that is

seriously menacing Ecuador, and therefore, endangering the peace and security of the Hemisphere.

My government is convinced that any moment Peru intends to launch an invasion of Ecuador and thereby violate her national sovereignty and integrity.

Elsewhere in the note Chiriboga expressed full confidence in the guarantors, but he nevertheless called for the immediate convocation of a Meeting of Consultation of Ministers of Foreign Affairs to agree on measures for the defense of Ecuador's sovereignty and integrity. 1)

The interim Peruvian representative, Gonzalo Pizarro, replied denying any concentration of troops and said the U.S. Naval Attaché had just verified that all Peruvian naval vessels were in harbor; he countercharged that Ecuador was engaged in an armaments race far beyond its normal requirements. The representatives of the guarantors pointed out that the guarantors' committee was at that very moment meeting in Rio, and the U.S. representative, John C. Dreier, said the U.S. planned to propose sending a military commission to observe conditions on the border.

In view of this situation Chiriboga agreed that the Council defer action until the results of the guarantors' activities could be ascertained. 2) The Council thereupon adopted a resolution expressing satisfaction at the prompt meeting of the guarantors and requesting them to keep the Council informed of developments and of measures adopted. The guarantors carefully complied with this request although the reports were somewhat delayed because the Brazilian Foreign Office insisted that all communications be channeled via Rio.

Reluctantly yielding to the insistence of all three other guarantors, Brazil's Foreign Minister, Raul Fernandes, finally had agreed to convoke a meeting of the guarantors just in time so that it could be announced at the OAS

1. Pan American Union, Inter-American Treaty of Reciprocal Assistance: Applications. Washington, D.C. 1964. Vol. I, p. 231 ff.

2. Council of the OAS, Minutes, Doc. C-a-191.

Council meeting that the guarantors were in session. Under threat of losing the initiative to the OAS, they agreed at their September 8 session to send telegrams to Lima and Quito indicating their concern over the tense situation prevailing and informing both governments that the guarantors were establishing a commission composed of one military attaché from each of the guarantor powers "to verify on the ground whether incidents have occurred or facts exist which could impair the peace between the two countries." The telegrams requested the consent and cooperation of the two governments to allow the commission to carry out its tasks. 1)

The attaché commission sprang into action with commendable speed, getting off its first tentative report on September 11 stating that aerial reconnaissance had revealed no threatening activity on either side of the boundary. The commission never found any basis for the reports of unusual troop concentrations on either side; Col. Woodford, the U.S. member, reported separately that the extreme nervousness which had actually existed was due to "fantastically inaccurate intelligence on both sides." 2)

As on a previous occasion, the commission did not limit itself to findings of fact, as the State Department would have preferred, but included a number of recommendations: that the Rio Protocol be carried out and the boundary be completely demarcated; that a special international commission be created with authority to check the frontier zone at any time on short notice; that Ecuador and Peru both review their programs for acquiring military equipment, and that the press be asked not to publish alarmist reports.

On instructions from the guarantors in Rio the military commission had also investigated the Yaupi incident of August 10 and concluded:

1. The Peruvians had crossed the frontier and captured the Ecuadorean soldiers in Ecuadorean territory;

1. Emb. Rio tel. 9-9-55.

2. Emb. Quito tel. 9-21-55.

2. This "unfriendly act" was due to excessive zeal on the part of the local Peruvian commander;
3. The Peruvians should promptly return the documents and equipment seized from the Ecuadoreans; and
4. Peru was impeding free navigation by the Ecuadoreans at the confluence of the Santiago and the Yaupi which was guaranteed by the Rio Protocol.

And again the commission included a number of recommendations which, whether welcome or not, made good sense:

- Both governments should withdraw frontier posts at least five kms. into the interior and consider replacing the military with police;

- Give military commanders at frontier posts clear and common instructions for dealing with their opposite numbers.

- Give the military attachés of the guarantor powers standing authorization to inspect frontier areas wherever necessary to calm down a situation;

- Request Peru to comply with Art. VI of the Rio Protocol so as to permit Ecuador free use of the tributaries of the Amazon. 1)

The complete report was not conveyed to the parties but in January 1956, the gist of the report, generalized and greatly watered down, was included in a message from the guarantors.

Just the news that the military commission was being activated had been sufficient to calm the excitement prevailing in Ecuador, and on September 27, 1955, Ecuador officially informed the OAS Council that the application of the Rio Treaty was no longer required. The result tended to discredit Ecuador to a certain extent, since

no basis for its denunciations of Peru's aggressive intentions had been found; Ecuador alleged that between the invocation of the Rio Treaty on September 8 and the aerial reconnaissance of September 11 Peru had demobilized its concentration of forces on the frontier.

The contrast between the procedures of the guarantors and those of the OAS was highly unfavorable to the former. Nine days elapsed between the United States' proposal for a meeting of the guarantors and the actual meeting on September 8th, while the Council of the OAS had met on less than 24 hours notice. It appears that only the likelihood that the OAS would intervene in the affair and derogate from the guarantors' prestige induced Foreign Minister Fernandes to call a meeting when he did. And it was the military attachés who came up with constructive suggestions, though admittedly difficult of realization. Similar thoughts may have been circulating in the Department, since attention now turned from the repeated efforts to put out brush fires to the need for a settlement of the issues at the root of the various incidents: the friction between Ecuador and Peru arising from the still unsettled boundary problem.

Efforts Towards a Definitive Settlement

Even before the settlement of the rearmament-Yaupi crisis, the Department of State had devoted considerable thought to means by which a permanent solution of the boundary question could be achieved. The position which was finally adopted was worked out after consultations with the field along these lines:

- The U.S. Government favored the creation of a standing military commission with broad authority to investigate tensions between Ecuador and Peru arising out of the boundary situation.

- The Department intended to work in concert with the other guarantors to achieve a solution which would be genuinely acceptable to both sides and have prospects of enduring.

- Any such solution should be in accordance with the terms of the Rio Protocol but should be adjusted to the geographic realities as stated in Art. IX.

- As a start, the Department considered a determination of the geographic facts to be of the highest importance and hence urged the guarantors to push for the establishment of a survey group; the Inter-American Geodetic Survey (IAGS) was already operating in both countries and could be made available for aerial and ground surveys.

- A survey could be preceded or followed by discussions between the parties in the presence of representatives of the guarantors if desired.

- Any points which remained in doubt could be referred to arbitration or to judicial settlement by established or ad hoc bodies. 1)

The correspondence of the period might lead to the conclusion that the officers of the Department did not have readily available copies of the aerial survey completed in 1946 and were proceeding on the basis of a statement by the IAGS Chief in Lima that photos could be made of the Santiago-Zamora region which would be superior to those taken in 1946, and hence that the 1946 photographs were inadequate. Actually, when the Ecuadorean Foreign Office in July 1956 gave the Embassy in Quito a copy, it was found to be quite adequate to indicate that there was no single watershed between the Santiago and the Zamora (see map following p. 133).

In fact, the Department was aware that no single watershed existed between the Zamora and the Santiago, but it was hoped that carrying out a new survey would start the parties talking to each other and eventually bring about a resumption of the demarcation process. 2) The problem was how to deal with the reality as disclosed by the aerial survey maps.

The Peruvian position on this point was clarified by the Foreign Minister, Adm. Luis Edgardo Llosa, when he called in the ambassadors of the guarantor powers on January 12, 1956, and reviewed with them the history

1. Dept's tels. to Lima, Quito, Rio de Janeiro, Buenos Aires and Santiago, 9-13-55, 9-14-55, 9-27-55, 11-7-55.

2. Recollection of Ambassador Bernbaum.

of the Braz Dias de Aguiar award. A few days previously the guarantors' representatives in Rio had agreed to propose to the parties a watered down version of the U.S. plan for a new aerial survey; as the Peruvian Foreign Office was always quickly informed of decisions reached in guarantors' meetings, it may be assumed that the minister's exposition of the Peruvian position was motivated by this decision.

Llosa stated that, in reaching his decision on the Santiago-Zamora sector in 1945, Aguiar had taken into consideration an Ecuadorean memorandum of November 23, 1943, which stated, "...the line should run along the course of the San Francisco gorge (Quebrada de San Francisco) to the Yaupi along the watershed of the rivers Zamora and Santiago and, in case such watershed is not found in whole or in part, should be completed by a geometrical line which would unite the extreme points of the line...in order then to adjust the line to accidents of terrain and geographical reality." 1)

The actual wording of the Aguiar award in its official English translation was, "The obvious intention of the Protocol is that of running the boundary line from the San Francisco River to the confluence of the Yaupi and the Santiago, along the most direct and easily recognizable natural line." 2) The Peruvian position thus was that the intent of the protocol was perfectly clear and the method of obviating any geographical anomalies was set forth in the Aguiar award and even more clearly in the Ecuadorean memorandum. The Mixed Demarcation Commission had "all the data and technical competence necessary to carry out the remaining demarcation without the intervention of other organizations," the minister concluded.

Despite Peru's manifest opposition, underscored by a note delivered personally to Assistant Secretary Henry Holland by Peru's Ambassador Fernando Berckemeyer on January 17, 1956, the Department continued to press the other guarantors to propose a new survey formally

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1. Emb. Lima tel. 1-12-56.
 2. Whiteman Memorandum, 3-18-53, Annex C, p. 23.

to the parties. The thought was that Peru would not refuse a formal proposal or, if it did, at least the record would be clear. Over much opposition from Argentina and Chile, the guarantors' representatives in Rio finally adopted a resolution, the portion which referred to the survey reading, "The guarantor states, without prejudice to the position of the parties, therefore, request that the governments of Ecuador and Peru authorize and facilitate an aerial survey of the indicated area by the IAGS." 1)

As anticipated, Ecuador readily accepted the guarantors' plan for a new survey and authorized the IAGS to undertake the survey including such ground observations as might be required. However, if there had been any hope of dragooning the Peruvians into agreement it was quickly dispelled. On May 24 the Peruvians sent their refusal to the guarantors. The note expressed surprise that the guarantors had referred to the settlement of the boundary since the boundary had been settled by the Rio Protocol; there had never been any previous question about the accuracy of the 1946 aerial survey, and it had been used by both governments in demarcating a considerable portion of the boundary; the region it was now proposed to resurvey included a considerable area where boundary markers had already been placed with the agreement of both parties; and Peru objected to the intervention of an agency other than the Mixed Boundary Commission which was charged with the responsibility of marking out the boundary on the spot.

However, the note continued, Peru did not wish to appear obstructive and, in seeking compliance with the Rio Protocol, the Aranha formula and the Aguiar award, proposed that the guarantors ask Ecuador to reactivate the Mixed Boundary Commission; should that body so desire, it could be permitted to use the IAGS for such additional aerial surveys as it might find necessary, but the work of demarcation should be done strictly in accordance with the award of Braz Dias de Aguiar. 2)

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1. Emb. Rio tel. 5/16/56.
 2. Pérez Concha, Ensayo, 2d ed. Vol. II, pp. 450-453.

Efforts to soften the Peruvians by assuring them that the United States was not moving toward a revision of the Rio Protocol were in vain. Discussions were virtually suspended pending changes of administration in both Peru and Ecuador; Mariano Prado returned to the Presidency of Peru on July 28, 1956, and Camilo Ponce Enríquez became president of Ecuador on September 1.

In this period the Ecuadorean Foreign Office adopted a position which widened the breach considerably; Under Secretary José Joaquín Silva informed U.S. Charge William A. Wieland that, since the U.S. Air Force maps delivered in 1947 showed that there was no watershed between the Zamora and the Santiago, the Ecuadorean government was convinced that several of the boundary markers already placed were incorrectly located and that the question of the whole area in dispute should be renegotiated with the help of the guarantors. Silva gave Wieland a copy of the Air Force map showing the markers already in place, and on July 19 handed over a memorandum stating that the two markers placed in November 1947 had not actually been approved by the Mixed Commission. And on August 3, 1956, Ecuador sent a new memorandum to the guarantors which concluded thus: "The Santiago-Zamora zone, except for the northern sector included in the award of July 14, 1945, is totally affected by the non-existence of a watershed between the River Zamora and the River Santiago." 1)

In this way a new element of contention was added to those already existing: Ecuador would refuse to recognize the validity of the markers placed on the Cordillera del Cóndor north of the Quebrada de San Francisco, while of course Peru would contend that they had been properly placed and agreed to by the Ecuadorean government. Instead of narrowing, the gap between the disputants was growing larger and more difficult of solution.

On the positive side, the arrival in Washington of the copy of the U.S. Air Force aerial map sent up by Charge Wieland served to clarify thinking in the Department on the geographic realities of the area. But the

1. Pérez Concha, Ensayo, 2d ed. Vol. II, p. 453.

outlook was not encouraging. On September 19, 1956, Maurice M. Bernbaum, Director of the Office of South American Affairs, told Ambassador Berckemeyer that Peru's repeated rejection of the guarantors' proposal left the latter "with virtually no possibility for constructive work.... He personally did not see how the guarantors could be of any further assistance in the matter." 1)

Washington Presents Package Settlement Proposal

The flat rejection of the proposal for a new survey and the question of the correctness of markers already placed required the formulation of a new policy if matters were not to be allowed to drift. This was the more urgent as Ecuador's ambitions were coming more and more into the open. Ambassador Chiriboga confessed to Maurice Bernbaum that no Ecuadorean administration could agree to a solution which did not put Ecuador on the Marañón; "To Ecuador," he said, "this is a matter of life and death and justice." 2)

Ambassador Ellis O. Briggs, who had just been transferred from Lima to Rio de Janeiro, also pressed for action. He recommended that the guarantors "stop dancing around the mulberry bush," say what they believed and be prepared to adopt a firm, unequivocal position. He thought Ecuador's claims to a sovereign outlet on the Marañón should be batted down since under no conceivable stretch of "geographic realities" could the boundary set forth in the protocol anywhere approach the Marañón. 3) Ambassador Theodore Achilles in Lima warmly supported his predecessor's viewpoint.

As a preliminary to formulating a revised policy, the Department undertook a study of the question regarding the validity of the boundary markers already placed since it was clear that this point was sure to be a major bone of contention. The regulations of the Mixed Boundary Commission of June 2, 1942, provided that a detailed

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1. Memorandum of Conversation: Berckemeyer, Pizarro - Bernbaum, Pringle, 9-19-56.
 2. Memorandum of Conversation, 2/14/57.
 3. Emb. Rio tel. 4/5/57.

record of the placement of each marker should be made and signed by the members of the commission "in order to give them a definitive character." However, Dr. McBride's report indicated that ratification by the governments became customary to make the placement final and binding. Since the letter of the regulations seemed to conflict with accepted practice, Miss Whiteman of the Legal Adviser's staff considered that litigation would be required to determine whether markers whose placement had been certified by the commission but not ratified by the governments would be binding.

As to the actual situation, it will be recalled that the Mixed Boundary Commission had functioned in two sections -- the western and the eastern. The western section had completed its work and made its final report, which was ratified by both governments on September 29, 1945. Included in the western sector were six markers north of the Quebrada de San Francisco beginning with the marker denominated "La Horquilla" through "Trinidad" (see map following p. 133). These were included in the act of ratification. The eastern section of the commission never rendered a report; hence the remaining markers between Trinidad and Cunhuime Sur had not been formally ratified. Only through judicial procedures could a determination of their validity be made. 1)

In reply to Ambassador Briggs' plea for determined action, the Department made a number of points in opposition:

- Until 1955 the guarantors had made no effort to seek a precise settlement; it had appeared that no solution agreeable to one party would be accepted by the other.

- The Department's efforts to break the impasse in 1955 had been taken over the combined indifference and reluctance of the other guarantors; the Department believed this reluctance to act still prevailed.

- The Department considered that the best chance of success lay in having a new survey to determine the

1. Memo, Pringle (OSA) to Bernbaum, 4/25/57.

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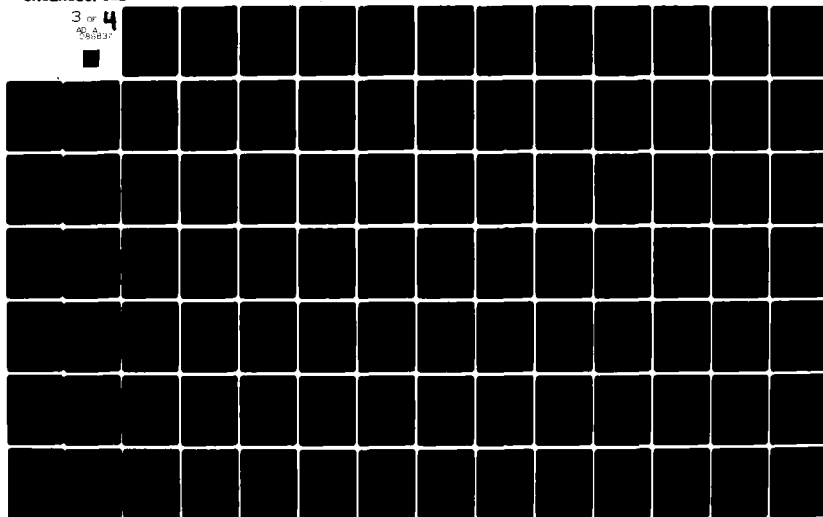
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geographic facts as a basis on which the parties could seek formulae for a solution.

- The Department was not in a position to determine the legality of the markers already placed.

- It appeared that Embassy Rio had misconceived the role of the guarantors; it was to assist the parties themselves to find a solution to their doubts and difficulties, not to attempt to impose a settlement on them. The Department did not believe a settlement could be achieved by coercion.

- The Department now renewed its suggestion for a survey as an essential first step but proposed to add to it a binding agreement that the survey would be followed by action to bring about a final demarcation: direct negotiation, judicial review or arbitration at the option of the parties. It was hoped this addition would make the survey acceptable to Peru.

- The communication concluded with the information that Bernbaum would visit Rio, Lima and Quito in May to discuss this proposal with the Embassies and with appropriate foreign officials. 1)

Bernbaum recalls that his discussions with Ambassador Briggs in Rio were quite amicable in spite of their differences in opinion, and the Ambassador raised no objections to Bernbaum's pursuing his plans with the Brazilian Foreign Office. It seemed that Bernbaum had struck pay dirt in conversations with Decio Moura, Secretary General of the Itamaraty and Bastian Pinto, Chief of the Political Section. Pinto agreed to discuss the possibility of tying the new survey to an agreement to insure a definite settlement first with the Peruvian Ambassador and later, if his reaction was favorable, with the Ecuadoreans. He also suggested proposing the conclusion of a treaty guaranteeing Ecuador free transit on the northern tributaries of the Amazon in advance of or simultaneously with a boundary settlement as a means of minimizing the importance to Ecuador of sovereign access to the Marañón.

1. Dept.'s Circular airgram 4/22/57.

In Lima Bernbaum's talk with Foreign Minister Manuel Cisneros Sánchez and his advisors centered on a means of improving the atmosphere of Peruvian-Ecuadorean relations so as to make possible the conclusion of a mutually acceptable agreement on the boundary. Cisneros and his colleagues welcomed the idea of a trade treaty and a treaty of commerce and navigation with Ecuador permitting free passage to the Amazon. He went further and said he would offer Ecuador a free port on the Amazon which would be far more valuable than territorial possession of the mouth of the Santiago since the Manseriche Rapids barred navigation downstream in that area. The question of a new survey was not broached for lack of time.

Ecuadorean Foreign Minister Carlos Tobar Zaldumbide was enthusiastic about the idea of trade and navigation treaties and agreed to tie the resurvey to an arrangement designed to guarantee a definitive settlement. He told Bernbaum that the Ecuadorean government had ratified the placement of all but two of the boundary markers but thought the discovery of the absence of a single watershed called in question the validity of some of the others.

The situation appeared genuinely hopeful when Bernbaum returned to Washington, but nemesis followed hard on the heels of hubris. On June 7, 1957, he outlined his plan in full detail to Ambassador Berckemeyer and Admiral Edgardo Llosa, the former Peruvian Foreign Minister under Odría who was then serving as Naval Attaché in Washington. Llosa was an expert on the boundary question and generally took the lead in discussions of this subject.

As regards the trade and navigation treaties, Llosa said these should logically follow rather than precede the boundary settlement; furthermore, he saw no reason why a new survey was required or why Peru should accept one; in his view the existence of one or two watersheds was irrelevant. As for referring the eventual settlement to arbitration or judicial decision, he did not think Peru and Ecuador should call in outside bodies to make decisions; this was the responsibility of the guarantors. 1)

1. Memorandum of Conversation: Berckemeyer, Llosa (Peru)
- Bernbaum, Timberlake (U.S.) 6-7-57.

Meanwhile, in Quito, the Foreign Ministry was back-tracking on the compromises which Tobar had considered possible. Dr. Julio Prado, Director of the Diplomatic Office, told Embassy Counselor Perry Culley that boundary markers placed in ignorance of the geographic realities were not binding on Ecuador even though ratified; he doubted Ecuador would agree to submit the results of a new aerial survey to arbitration or judicial settlement, and he thought when part of a treaty was inoperable, all the treaty was incapable of execution although, he said, Ecuador would comply with the Rio Protocol. However, (and contradictorily) Prado said Ecuador would insist on sovereignty over a portion of the Marañón, not simply access to it.

Quite evident in Prado's remarks was the gradual moving of Ecuador into a position where it would assert the absolute nullity of the Rio Protocol. From the first some Ecuadorean leaders had questioned the validity of that document on the grounds that it was signed under coercion while Ecuador was partly occupied by Peruvian troops and that it deprived Ecuador of "inalienable" rights as an Amazonian power. Perennial President Velasco Ibarra had long made opposition to the territorial settlement concluded at Rio part of his political stock-in-trade, and it will be recalled that President Camilo Ponce, as Velasco's interior minister, had also taken a highly nationalistic line. Settlement by compromise was poor politics in Ecuador; Tobar's conciliatory attitude reflected his background as a professional diplomat and was unlikely to find support elsewhere in the administration.

The final collapse of Bernbaum's carefully constructed plan was signalled by a personal letter from Foreign Minister Cisneros of July 8, 1957. Having been informed by Berckemeyer of the full extent of Bernbaum's proposals including another survey not mentioned in Lima, Cisneros rejected the whole package; Peru would not consider submitting to an international tribunal a matter which had already been the subject of an arbitral award; while Peru would be prepared to negotiate ample facilities for Ecuador in matters of trade and river transit, this would have to be simultaneous with Ecuador's decision to conclude the demarcation in accordance with the protocol, the Dias de Aguiar award and the decisions of the Mixed Boundary Commission. In discussing this letter later with Berckemeyer and Llosa, Bernbaum said it returned

the question to where it had been two years before; however, he would continue the search for a mutually acceptable solution.

Brazil Picks Up the Ball

Although his plan had not been accepted, Bernbaum's visit to Rio de Janeiro had stimulated thinking in the Itamaraty which for a time showed promise of bringing results. As promised, Secretary General Moura conferred with the Ecuadorean and Peruvian Ambassadors and produced the following plan:

1. Existing boundary markers would be recognized.
2. The gap between them would be filled by drawing a line east from Cunhuime Sur (the farthest north marker on the Cordillera del Cóndor) to the Cenepa river, then north along the Cenepa to a point opposite marker 20 de Noviembre, then by straight line to that marker.
3. Negotiation of treaties of trade and navigation to be announced simultaneously with an announcement that Peru would provide Ecuador with a free port on the Marañón below the Pongo de Manseriche and construct a road around the rapids. 1)

Little optimism was felt for Moura's plan. Moura himself reported that Ecuadorean Ambassador Neftali Ponce had said Ecuador would not accept any settlement which failed to provide a foothold on the Marañón; on the basis of talks with Ambassador Chiriboga, the Department concurred in Moura's opinion that Ecuador was prepared to let the dispute drag on indefinitely rather than settle for anything less. However, Peru's Vice President, Carlos Moreyra y Paz Soldán visited Rio at the end of July 1957 and left a memorandum which the Brazilians thought showed some softening in Peru's position.

The three point memorandum provided for (1) reconstitution of the Mixed Boundary Commission with the assistance

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1. Emb. Rio tel., 7-18-57.

of an expert named by the guarantors with the mission of solving any discrepancy regarding the adaptation of the boundary to geographic reality; (2) the area of the commission's work should be between the markers already emplaced - i.e., between Cunhuime Sur and 20 de Noviembre - and its specific objective would be the determination of the geographical factors which should constitute the land or water line that the frontier should follow in accordance with the letter and spirit of the protocol and with undertakings already carried out; 1) and (3) the Mixed Commission would function under the presidency of the expert named by the guarantors and might carry out supplemental studies for purposes of information such as mapping or aerial photography of the zone specified under part 2; the commission should verify such data by inspection on the ground. 2)

On the basis of this hopeful new development, Brazilian Foreign Minister Macedo Soares called a meeting of the guarantors' representatives for August 19, 1957, at which both the Moreyra memorandum and Moura's Cenepa River plan were discussed. The members agreed that further exploratory talks should be held, and in October Macedo Soares sent his most knowledgeable expert, Luiz Bastian Pinto, to Lima and Quito to "take the temperature." Pinto found Foreign Minister Cisneros in Lima disposed to be cooperative, and in Quito Tobar was agreeable to reactivating the Mixed Commission with a representative of the guarantors. On the basis of these soundings Macedo Soares considered the prospects sufficiently alluring to take a hand in the matter personally. This he did on an official visit to Lima at the end of November.

It is doubtful that this plan had much chance of success from the beginning, but its prospects were not enhanced by Macedo Soares' practice of making optimistic public statements somewhat prematurely. The first of these took place on November 26 when in a press interview

1. Sources are not clear on just what "undertakings already carried out" was intended to cover. A likely guess would be the acceptance of markers already placed; another possibility would be an obscure reference to the Aguiar award.

2. Emb. Rio tel. 8-20-57.

in Lima he said the guarantors had resolved to request Peru and Ecuador to reactivate the Mixed Commission on which a technician named by the guarantors would serve "not as an arbitrator or mediator but simply as a colleague, by reason of his...well recognized competence." He added that Col. Ernesto Bandeira Coelho, Chief of Brazil's northern boundary commission and an aide to the late Braz Dias de Aguiar, had been selected for this position. 1)

The other guarantors were not aware that any such resolution had been taken or that Col. Coelho had been selected to represent them; of course Coelho's former association with Aguiar would not recommend him highly in Ecuador where the latter's memory was held in rather less than the highest esteem. Similarly, the approval which the Brazilians thought they had obtained from Tobar Zaldumbide turned out to be sharply qualified: Ecuador would agree to the reactivation of the commission provided it had no authority to continue demarcating the boundary but only to study the terrain and prepare a report on the existence or non-existence of a watershed. Hence Tobar had been surprised by Macedo Soares' remarks in Lima. 2) Bastian Pinto hoped things could be straightened out when Macedo Soares visited Quito in February.

At one point during his visit to Quito, which began on March 3, 1958, it appeared that Macedo Soares was on the verge of success. The key question was the terms of reference for the resumed activities of the Mixed Boundary Commission. The formula designed to bridge the gap over the irreconcilable was that the commission would "effect studies permitting the future realization of the commission's functions," but on March 8 the effort collapsed when the Ecuadoreans insisted on language clarifying what the commission would and would not do which the Peruvians could not accept. 3)

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1. Emb. Lima tel. 11/27/57.
 2. Memorandum of Conversation Chiriboga-Bernbaum, 12/4/57.
 3. Emb. Quito tel., 3-7-58 and despatch 3-10-58.

In an effort to save the sinking ship, Macedo Soares, after his return to Rio, suggested a meeting of the Boundary Commission in Rio without any fixed agenda. Ecuador rejected this idea despite urging from both Brazil and the United States, who pointed out that in any case the commission could take no action without Ecuador's consent. Macedo Soares confessed that the affair had again reached a dead point; he and Ambassador Briggs both thought the only solution would be to put pressure on Ecuador; but the Department limited itself to urging acceptance of a commission meeting in Rio. 1)

Other circumstances which once had seemed hopeful also took a turn for the worse. Cisneros was replaced as Foreign Minister of Peru by Raul Porras Barrenechea, reportedly a "hard liner" on the boundary question, and Macedo Soares gave way to Negrão de Lima, who showed no interest in pursuing the elusive solution to a problem which, at every turn, seemed to become more complicated.

The 11th Inter-American Conference and the Boundary Dispute

Since the beginning of the 20th century the American Republics had been accustomed to meet in conference every five years when circumstances permitted. This Inter-American Conference was, by terms of the Charter, the supreme organ of the OAS and had authority to consider any matter relating to friendly relations among the American States. At the Tenth Inter-American Conference in Caracas (1954), it had been agreed to hold the next meeting in Quito in 1959, and hosting a major inter-American conference became a matter of national pride in Ecuador.

However, as acrimony over the boundary issue increased, Peru began to use the threat of non-attendance at the conference as a lever to induce the guarantors to take action favorable to Peru's case. Peru was strongly opposed to any effort by Ecuador to place the problem on the conference agenda, and as early as September 1957, Ambassador Chiriboga informed officers of the State Department that "Ecuador would not be so impolite as to broach this matter while acting as host at the conference."

1. Emb. Rio tel., 4-1-58; Dept. tel. to Emb. Rio 4-7-58.

Contrary to his former tactic of urging the guarantors to take action, Chiriboga now indicated that there need be no haste in attempting to solve the boundary question and that it would be preferable to wait until the atmosphere improved. 1)

At about this time the Department was informed that it would be impossible to complete the buildings the Ecuadorean government was having constructed to house the conference and its delegates by 1959 and that at least a year's postponement would be necessary.

On September 25, 1958, Peruvian Foreign Minister Raul Porras Barrenechea, who was attending the United Nations General Assembly in New York, called on Assistant Secretary Rubottom at the State Department, and, with his usual bluntness, propounded the view that the non-settlement of the boundary dispute was responsible for the arms race in Latin America and that the arms race in turn was responsible for the area's failure to develop economically and socially. He blamed the United States for failure to enforce the treaty and said Peru would not attend the 11th Inter-American Conference in Quito while Ecuador insulted Peruvians and ignored its obligations. Porras added that Peru would not yield on any vital points but would be generous otherwise and offer Ecuador a free port on the Amazon.

The generalized threat was soon converted into a specific demand: in a memorandum of February 11, 1959, the Peruvian Foreign Ministry informed the guarantors that Peru had decided not to participate in the Quito conference unless Ecuador resumed the work of the Mixed Boundary Commission and declared its intention to respect the line thus drawn. 2)

Given the failure of efforts to find a formula under which the dispute could be referred to arbitration and the intransigence of both parties, the Department of State began to consider the advisability of ceasing efforts to find a solution and simply allowing the dispute to

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1. Memo of Conversation, Chiriboga-Sanders, 9-17-57.
 2. Emb. Rio tel., 2-13-59.

become dormant. In raising this question in a circular airgram of January 9, 1959, to the interested field posts, the Department noted that Ambassadors Berckemeyer and Chiriboga had strongly advised against pushing matters; Berckemeyer particularly feared that efforts to induce Peru to accept arbitration would result in deterioration in U.S.-Peruvian relations.

Embassy Quito endorsed the Department's suggestion, pointing out that President Ponce faced his most serious political crisis since taking office and that any settlement short of access to the Marañón might result in his overthrow. Ambassador Briggs, on the other hand, said that, based on his four years experience with the boundary problem -- one in Lima and three in Rio -- he was struck by the timidity of the guarantors who seemed to have operated on the theory that wishful thinking plus polite attention to the innumerable conflicting statements of the disputants would eventually produce a settlement. He forecast that, if the guarantors continued along this indecisive line, a decade hence we would still be dancing around the same maypole. Briggs proposed that the guarantors issue a statement of their determination to discharge their responsibility under the Rio Protocol; this statement should also confirm the validity of the markers emplaced north of the Quebrada de San Francisco, call upon the disputants to submit to arbitration and set forth the terms of reference under which the arbitration should take place. In a separate message Briggs also urged that the Ecuadoreans be flatly told that by no stretch of the imagination could the protocol provide them with sovereign access to the Marañón. 1)

In the course of March 1959 both Ecuador and Peru formulated their current thinking on terms of settlement which revealed that they were just as far apart as ever; Ecuador insisted on determining whether the non-existence of a geographical feature specified in a boundary treaty made it impossible to carry out the clause of the treaty relating thereto; while Peru rejected arbitration but was willing to have a meeting of Foreign Ministers.

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1. Emb. Rio despatch, 3-12-59.

The Department, however, considered that "the personality of Foreign Minister Porras and his known views on the boundary problem are not such as to encourage optimism with regard to bilateral talks in which he would participate." 1)

In May 1959 the Peruvian government sent Ambassador Guillermo Hoyos Osoreo as special envoy to the guarantor powers in a renewed effort to wring some advantage out of Peru's attendance at the 11th Inter-American Conference. Ambassador Hoyos Osoreo informed a meeting of the guarantors' representatives in Rio on May 26 that Peru would probably not be able to attend the Quito conference unless progress were made on the boundary issue in the next few months. He asked the guarantors to issue a declaration (1) that the Rio Protocol was inviolable and (2) that the boundary markers already placed and agreed to by the parties were definitive. Foreign Minister Negrão de Lima, chairman of the meeting, replied that the guarantors would of course uphold the Rio Protocol but as for the boundary markers in the disputed area, there were some questions of law and fact. 2)

The presentation of this demand was the beginning of a long and intensive campaign by Peru to persuade the guarantors to take action which would bolster Peru's contentions. President Prado, whose administration had been encountering domestic opposition, personally urged Ambassador Achilles to back the proposal for a declaration reaffirming the "intangibility" of the Rio Protocol and the validity of the markers already placed. Foreign Minister Porras also gave Achilles a lengthy memorandum on the subject, and Achilles recommended to the Department the issuance of a general statement by the guarantors as he considered it dangerous to allow this verbal and written barrage to continue without some reply. The Department, however, declined to act independently of the other guarantors. 3)

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1. Department's Circular Airgram 4/13/59.
 2. Emb. Rio tel., 5-27-59.
 3. Emb. Lima tel., 6-10-59 and despatch, 6-11-59; Dept. airgram to Emb. Lima, 6-24-59.

The government of Ecuador, well informed regarding the Peruvian campaign, vigorously opposed the issuance of a statement, arguing that however innocuous it might be, it would stir up agitation in Ecuador, especially by the extreme left, which was attempting to disrupt the Quito Conference. The situation was rendered more tense by the interplay between the press and radio of both countries, especially those linked to opposition groups. The government of Peru unleashed a press campaign reminiscent of 1941 which bitterly attacked the United States for opposing the issuance of a declaration by the guarantors. Despite assurances that the United States was working with the other guarantors on a possible declaration, the Peruvian attacks continued and became a matter of some concern to Washington.

Even without the issuance of a declaration, the situation in Ecuador seemed to be getting out of hand. The fact that presidential elections were to be held on June 5, 1960, and that José María Velasco Ibarra was a candidate for a fourth term, greatly exacerbated political tempers. In early September 1959, Foreign Minister Tobar told Henry Raymont of UPI that Ecuador would not seek to have the boundary question placed on the agenda of the Quito conference; he was quoted as saying, "As the country in which the conference will be celebrated, Ecuador will do everything possible to create an atmosphere of friendship and conciliation...with the object of invigorating the Pan American system. Hemispheric interests must prevail over all other considerations. If it had to resolve all bilateral problems as a precondition for international meetings, the inter-American system would be seriously hampered." Raymont concluded on the basis of his interview that the government of Ecuador would "freeze" the boundary question until after the conference. 1)

The public wrath which broke over the unfortunate minister's head was close to overwhelming. The socialist leader in the Chamber of Deputies, Ricardo Cornejo, cried, "If it's not going to discuss the border problem, let the 11th Conference not meet!" This belief was widely

1. Pérez Concha, Ensayo, 2d. ed. Vol. II, pp. 462-463.

shared as was opposition to the implication that Ecuador's problems should be subordinated to hemispheric concerns. Tobar was haled before the Chamber of Deputies to explain his statements and was able to avoid a vote of censure only because the pro-government deputies absented themselves from the session, resulting in the absence of a quorum.

Tobar had saved himself by the skin of his teeth but the agitation against the conference continued. The leftist political magazine La Calle said it should be postponed at least until September 1960 by which time a new administration would be in power. Putting it more bluntly, Carlos Julio Arosemena, Velasco's campaign manager, said the conference should be postponed until capable men were in office, and the candidate himself in an interview in Buenos Aires said that since Ecuador had been despoiled of half her territory at an inter-American conference, it would be appropriate for the Quito conference to make a statement in favor of revising treaties. "Respect for treaties is unquestionable but treaties are revisable if they violate justice." 1)

The agitation in Ecuador was such that genuine concern was felt for the safety of the Peruvian delegation; Porras said he feared a Bogotazo. On December 12, 1959, after a visit to Brazil, Foreign Minister Tobar let it be known that if someone else suggested postponing the conference, Ecuador would not object. Some studies and necessary reports had been delayed; besides, the paint would still be wet on the new buildings. The OAS gratefully seized the opportunity and on December 30 postponed the conference to an undetermined date. Later, it was rescheduled for March 1, 1961.

The Ecuadorean Elections of 1960

The period following the postponement of the 11th Inter-American Conference was one of relative quiet so far as the international aspects of the boundary issue were concerned, but it was a time of great political effervescence in Ecuador and consequent uneasiness in Peru. The leading candidates vied with each other in

1. Buenos Aires despatch, 11/24/59.

excoriating the Rio Protocol and in their attacks on the outgoing administration of Camilo Ponce and especially on his Foreign Minister, Carlos Tobar Zaldumbide.

At the beginning of the campaign, candidate Dr. Antonio Parra Velasco, Rector of the University of Guayaquil, had said in an address, "My government will set forth to that of Peru, in clear and precise form, the discontent of the Ecuadorean people with the Rio Protocol, their disagreement with this unjust boundary agreement, imposed by the force of arms, and will invite that country to negotiate another agreement, freely agreed to, free of the flaws from which the old one suffers, and based on the immutable principles of international justice." 1)

Dr. Velasco Ibarra's opposition to the Rio Protocol was well known and had been made manifest from the first news of the signing. Prior to the election his main proposal had been to have the 11th Inter-American Conference in some undisclosed manner declare in favor of the revision of the protocol. Perhaps his advisers had explained to him how impossible this would be in a meeting where nearly every state represented relied on treaty obligations for the stability of its boundaries.

In any case, after his election on June 5, 1960, Dr. Velasco was invited to inaugurate a statue in memory of Captain Edmundo Chiriboga, who lost his life in the Peruvian invasion of 1941. On August 17, 1960, at Bombamba, Velasco orated: "The Rio Treaty is null; we don't want war, but we will never recognize that protocol.... Ecuador demands of Hispanic Americanism, that, in order that there may be justice in the continent, they recognize (Ecuador's) right to have a port on the banks of the great Amazon river, and a place in the Oriente as a base for Ecuadorean nationality and culture." 2)

So great was the popular enthusiasm for Velasco's declaration that the newly-elected congress, under virtually complete control of Velasco's supporters, summoned

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1. Pérez Concha, Ensayo, 2d. ed. Vol. II, pp. 471-472.
 2. Emb. Quito despatch, 8/18/60.

Tobar Zaldumbide for a second interpellation regarding his statement to Henry Raymont. Given the composition of the congress, the result was a foregone conclusion, and Tobar resigned rather than submit to the ordeal. Not content with this, the congress adopted a resolution stating that "Tobar fell into grave errors especially concerning the defense of Ecuadorean territorial rights and the maintenance of Ecuador's international dignity" and that his statements to Raymont "wounded the dearest aspiration of Ecuadorean brotherhood." The congress rejected his statements to Raymont and declared "that Carlos Tobar Zaldumbide in those actions as Foreign Minister has not complied with the obligations of his office." 1)

In another resolution Congress urged the Executive to bring about consideration of the Ecuadorean-Peruvian problem at the next Inter-American conference, and on August 27 Congress gave a standing unanimous endorsement to Velasco's statements about the nullity of the Rio Protocol. Whether Velasco had intended to launch a new policy in his Riobamba speech or whether his pronouncement was the climax of a flight of oratory, he found himself immensely popular with an issue he could not afford to drop but which would surely create international complications for the Ecuadorean state.

1. Emb. Quito tel., 8-19-60.

CHAPTER IX

NULLIFICATION AND THE GUARANTORS

The Velasco Administration, Peru and the Protocol

What would be the practical outworking of Velasco's statement that the Rio Protocol was null? The tremendous response of public opinion and the unanimous resolution of the congress insured that the statement could not be swept under the rug and forgotten. José R. Chiriboga, Ambassador in Washington, was designated by Velasco to be his Foreign Minister and returned immediately to Quito.

Even prior to assuming office Chiriboga met informally with the representatives of the guarantors in Quito (August 28, 1960) and told them that the protocol had been imposed by force and that for years a divergency had existed between the Ecuadorean people and the diplomats, with the latter trying to carry out the terms of the protocol against the wishes of the people. He said the new administration considered the agreement to hold the 11th Inter-American Conference in Quito a "sacred obligation"; Ecuador would regret it if Peru did not attend, but the absence of one country from an inter-American conference would not be unprecedented. 1)

Velasco's inaugural address on August 31 did little to clarify his intentions toward the Rio Protocol. He said that treaties signed with a cannon at the breast were null in accordance with Pan American rules and that Ecuador was disposed to an honorable agreement but would never renounce its character as an Amazonian nation. This seemed somewhat less specific than his August 17 statement since he did not mention the protocol by name although the inference was clear.

Foreign Minister Chiriboga was able to give a few hints of the Velasco administration's strategy on his return on September 11 from a trip to Bogotá. Asked when Ecuador would denounce the Rio Protocol, he said it had

1. Emb. Quito airgram 8/30/60.

already been denounced by the president, the congress and the Foreign Office. Embassy Quito interpreted this to mean that Ecuador had gone as far as it intended by informally declaring the protocol null and that Velasco and Chiriboga probably realized that there was no legal provision for formal denunciation.

This interpretation, which proved to be correct, was partially confirmed a few days later when Chiriboga met with the representatives of the guarantors and told them that the government was preparing the juridical basis for formal denunciation but that it had no present plan for any step beyond the exposition of the thesis. In attempting to explain the Ecuadorean position to the Department of State, the Ecuadorean Charge in Washington said that Ecuador had not denounced the protocol but had categorically proclaimed its nullity; i.e., Ecuador was not terminating a valid treaty but was arguing that it had been invalid ab initio. This position was obviously in conflict with Ecuador's previous participation in the work of demarcation which had resulted in fixing the boundary over all but about 78 kms. of its length.

Needless to say Chiriboga's statements to the public tended to be more rhetorical than those to the guarantors, as when he told a public audience, "The Protocol of Rio de Janeiro is null.... The conscience of America will not permit aggression. Our tactics will be to saturate the conscience of America with the justice and right that are on our side.... Afterwards new steps will be taken to obtain vindication of legitimate Ecuadorean rights." He went on to explain that the Foreign Office would defend the thesis that the treaty of 1829 was the "solution of peace and concord." 1)

To complete the triad of executive, legislative and judicial, all 15 justices of the Ecuadorean Supreme Court signed a declaration on November 12, 1960, stating that the protocol "suffers from absolute nullity because it was imposed on Ecuador by force of arms when its territory was invaded. Free consent is the basic element of all contractual agreements...." 2)

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1. Emb. Quito tel. 9/16/60.
 2. Emb. Quito tel. 11/14/60.

Ironically, one of the signers of this declaration was Julio Tobar Donoso, who had with such reluctance signed the protocol on January 29, 1942.

The declaration that the Rio Protocol was null had the easily anticipated effect on the Peruvian government, press and political circles. Embassy Lima said there was no other significant domestic or international issue affecting Peru on which national unity was so pronounced. The Foreign Office issued statements on September 2 and 6 pointing out that the unilateral denunciation of a treaty would constitute a dangerous precedent which could undermine the American regional system, the legal order and the basis for the conduct of peaceful relations between nations. The September 6 statement concluded, "Our government is not going to abandon its attitude of serenity or its purpose of doing what is possible to live in peace and harmony with the Republic of Ecuador. But it will not recede one step in defense of the inviolability of the treaties and the laws of Peru, and it will adopt all the measures necessary for the security of the nation. Of this there should be no doubt whatsoever". 1) The Chamber of Deputies unanimously rejected Ecuador's revisionist tactics, and even the opposition Acción Popular party declared its support for the government's position and repudiated the unilateral denunciation of the protocol as "absurd and illegal". 2)

The Peruvian Foreign Office lost no time in officially making its views known to the guarantors. 3) Prior to Ecuador's declaration of nullity, Peru had been pressing for a statement by the guarantors supporting Peru's contention that the Rio Protocol was unalterable, that the boundary markers already placed were immovable and that the Mixed Boundary Commission should resume its work following the provisions of the protocol and the Aguiar award. The declaration of nullity gave the Peruvians an additional lever for insisting on a declaration by the guarantors which would, in addition to the above points, also reaffirm the validity of the protocol itself. The Peruvian

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1. Emb. Lima despatch, 9/7/60.
 2. Emb. Lima tel. 9/9/60.
 3. Peruvian Emb. Memorandum to Dept. of State 9/8/60.

Foreign Ministry had Ambassador Guillermo Hoyos Osores shuttling back and forth between Rio, Buenos Aires and Santiago urging the respective Foreign Ministries to issue the declaration. He saw Minister-Counselor Bernbaum in Buenos Aires on September 27, 1960, and said the United States was the only one of the guarantors opposed to issuing a declaration and that this could cause an adverse reaction in Peru against the United States. 1)

The situation was regarded so seriously in Peru that President Prado twice called Charge Jack D. Neal to the palace to urge the issuance of a statement, saying that failure to do so would encourage Ecuador to go further and that if Ecuadorean attacks on Peru did not stop, he might have to send the fleet to Guayaquil. He rejected out of hand Neal's efforts to claim that the U.S. was not the only guarantor opposed to a declaration and urged Neal to go to Washington to explain to the Department the true gravity of the crisis; the Department considered the Charge's travel unnecessary. 2) In fact, it appears that the other guarantors did favor a declaration but were not agreed on its form and wording. On October 10 the Foreign Minister informed Neal that he had instructed Ambassador Berckemeyer formally to request a meeting of the guarantors. 3)

Meanwhile, in Washington, the Department had been endeavoring to calm the agitated spirits and avoid being forced into a situation which would exacerbate matters. This was a period in which the Cuban problem was acute, and the Department considered it of extreme importance to preserve hemispheric solidarity. Under Secretary Douglas Dillon and Assistant Secretary Thomas C. Mann had attended Velasco's inauguration and as a result of their discussions with him and with Chiriboga thought it best not to make any representations to the Ecuadoreans which might serve to drive them into more extreme positions. Their objective was to keep the subject under study and discussion as long as necessary to reach an agreement between the disputants. 4) This course of action was strongly seconded by Embassy Quito.

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1. Emb. Buenos Aires tel., 9-27-60.
 2. Emb. Lima tel., 10-10-60; Deptel to Lima, 10-14-60.
 3. Emb. Lima tel., 10-10-60.
 4. Emb. Bogotá tel., 9-6-60.

The Department's fear was that a tough statement by the guarantors would goad the Ecuadoreans into making a formal denunciation of the protocol, and it was hoped to use the inducement of the 11th Inter-American Conference, still scheduled for Quito, to prevent such action. In an effort to concert policy with the other guarantors, Secretary Herter and Assistant Secretary Mann met with the Argentine and Brazilian Foreign Ministers and the Chilean Ambassador at the United Nations on September 27, 1960. They agreed verbally to inform both the Ecuadorian and the Peruvian delegations to the UN General Assembly that no formal meeting of the guarantors would be held until after the Quito Conference but that if there should be a unilateral denunciation of the protocol before then, the guarantors would have to meet to consider the situation; moreover, the guarantors could not be expected to agree to any unilateral denunciation of the protocol. 1)

This informal, unwritten plan of action became known as the "Gentleman's Agreement" and was, as so often happens, interpreted differently by different persons. Chiriboga and Peruvian Ambassador Víctor Andrés Belaunde were separately informed of the thinking of the guarantors, and the former was urged particularly not to use extreme or categorical language in his address to the UN Assembly lest he force the guarantors to make a statement they would prefer to avoid. However, Chiriboga argued that since the president and the congress had declared the protocol void, he could scarcely do less. 2) As it turned out the Peruvians did consider the language of Chiriboga's September 29 address too strong, and this led directly to Peru's formal request for a meeting of guarantors. 3) When Ambassador Belaunde informed Secretary Herter on October 11 that all the other guarantors favored a meeting, the Secretary agreed not to oppose it. 4)

Foreign Minister Chiriboga was furious when he learned that the guarantors had agreed to meet, holding this to be a violation of the "Gentleman's Agreement." It

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1. Dept. circular tel. 9-27-60.
 2. USUN tel., 9-28-60.
 3. Dept. tel. to Lima 9-30-60.
 4. USUN tel. to Dept. 10-11-60.

was pointed out to him that the "agreement" had been among the guarantors and in any case had been contingent on Ecuadorean officials' refraining from repeating their declarations that the protocol was null, a condition neither President Velasco nor Chiriboga himself had observed. 1) Chiriboga told Chargé Edward S. Little that if the guarantors issued a declaration, Ecuador would have no recourse other than immediate and formal denunciation of the protocol. 2) At the same time President Prado was informing Neal that if the guarantors met and failed to issue a statement, it would be worse than no meeting at all and prejudicial to Peru. 3) The guarantors were indeed on the horns of a dilemma.

It was just at this crucial moment that Maurice M. Bernbaum was appointed American Ambassador in Ecuador. Of all the officers of the Foreign Service, Bernbaum had probably had the most exposure to the Ecuador-Peru boundary problem, and he was well acquainted with the various actors. He had previously been assigned to Quito as Deputy Chief of Mission between December 1947 and June 1950; in the latter month he was assigned to the Department where he served as Officer-in-Charge of North Coast Affairs, a designation which anomalously included Ecuador as well as Venezuela and Colombia. Later, in 1955, he became Director of the Office of South American Affairs, in which capacity he devoted much time and effort to the boundary problem as has been noted above; during most of this period the Ecuadorean Ambassador was José R. Chiriboga who had assumed the Foreign Ministership a few months before Bernbaum's arrival for a second tour in Quito. Between September 1958 and October 1960 Bernbaum was Director of East Coast Affairs and Minister-Counselor in Buenos Aires, both of which positions brought him in contact with two of the three other guarantor powers. His knowledge and expertise were to be fully tested in the months ahead.

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1. Emb. Quito tel., 10-14-60; Dept. tel. to Quito, 10-14-60.
 2. Emb. Quito tel., 10-19-60.
 3. Emb. Lima tel., 10-19-60.

Before leaving Buenos Aires Bernbaum discussed the Ecuador-Peru boundary problem with Dr. Diógenes Taboada, Argentine Foreign Minister, and with the Director General of Political Affairs, Luis Santiago Sanz (October 24, 1960). He found the Argentines favoring a strong joint declaration more or less as desired by Peru; however, they were not unaware of the problems being faced in Ecuador. 1)

En route to Quito, Bernbaum stopped off in Lima and asked Foreign Minister Alvarado whether Peru would accept submission of the question of the status of the protocol to the International Court of Justice (ICJ). The reply was an uncompromising negative; Alvarado said if he even considered such a possibility, the Prado government would fall and the military would be in Guayaquil immediately; furthermore, Ecuador would not comply with any ICJ decision adverse to its point of view. He did not even wish to discuss the boundary problem with Ecuador; all he wanted was compliance with the protocol. 2)

It would seem that the Peruvians over time have done themselves a disservice by reiterating that all they wanted was to carry out the protocol. Given the fact that the terrain did not fit the language of the protocol, this statement smacked of insistence on compliance with an impossibility. It is necessary to remember what they really meant was compliance with the spirit of the protocol as interpreted by the Braz Dias de Aguiar award of 1945 which laid down that the intent of the protocol was that the boundary should follow the shortest and most natural line between the Quebrada de San Francisco and the confluence of the Yaupi and the Santiago. In reviewing the communications of the period one gets the impression that the Peruvian officials were so familiar with their case that they sometimes failed to explain it fully to others.

During Bernbaum's initial call on Foreign Minister Chiriboga on October 28 the latter made the following points which summed up Ecuador's position at that time:

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1. Emb. Buenos Aires tel., 10-27-60.
 2. Emb. Lima tel., 10-27-60.

- All Ecuadoreans regardless of their political affiliation were opposed to the protocol; the Velasco administration could not backtrack if it wanted to.

- A guarantor declaration reaffirming the validity of the protocol would be gratuitous since it had not been formally denounced. The anticipated adverse reaction against the United States would play into the hands of the Castroites.

- Chiriboga urged that the guarantors do nothing to close the door on future action to work out the problem. He said he hoped to obtain a resolution from the 11th Inter-American Conference, which he was determined to hold as scheduled, calling on the parties to settle their dispute and perhaps appointing a committee to follow up on the matter.

- Ecuador did not expect a prompt solution and was gambling that Peru would not attack because of UN and OAS commitments.

- Ecuador regarded the Cenepa and watershed issues outmoded. Repudiation of the protocol included the entire area and not just the undemarcated sector. Ecuador desired the line of the Napo River all the way to the Amazon and not just access to the Marañón. 1)

This last point was of especial importance since it revealed the full extent of Ecuador's objectives. It fully confirmed Peruvian fears that the Ecuadoreans aimed to scrap the entire boundary settlement of 1942 and negotiate a new one vastly more favorable to Ecuador. Bernbaum explained to the Minister that the Peruvian play on other countries' fears of tearing up all boundary agreements had been very effective and that some declaration by the guarantors opposing the unilateral denunciation of treaties was now likely.

On the very day of Bernbaum's talk with Chiriboga (October 28, 1960) the guarantors' representatives in Rio were meeting to discuss the draft of the statement

1. Emb. Quito tel., 10-28-60.

they proposed to issue. As it turned out the drafting procedure required the entire month of November during which the disputants fired their heaviest artillery in an effort to sway the decision their way. The first issue settled was the form of the declaration: on October 23 Chiriboga had sent a telegram to each of the guarantor states questioning their authority to give an opinion on the validity of the protocol, and it was decided that each of the guarantors would reply with separate but identical telegrams. Copies would then be despatched to Lima as replies to one of Peru's many communications on this subject. 1)

The principal point of contention was whether the statements should endorse fully the Peruvian concept of the "unalterability" of the protocol and the "immovable" character of markers already placed. Argentina strongly backed the Peruvian thesis while the United States preferred wording that implied the possibility of judicial review of disputed points or change by mutual agreement of the parties.

On the basic principle of opposition to the unilateral nullification of international agreements, there was no difference of opinion among the guarantors. By the end of November, the last nit had been picked, and it was decided to send the messages, identical but in the three languages of the guarantors, at 5 p.m. on December 7, 1960. The choice of Pearl Harbor Day seems to have been fortuitous but not for that less ominous.

The Guarantors' Declaration and its Sequel

The messages despatched directly to the Ecuadorean Foreign Minister on December 7 commenced with an acknowledgement of Chiriboga's cable of October 23 and stated that his remarks were of concern to the powers guaranteeing the protocol. It continued:

It is a basic principle of international law that the unilateral will of one of the parties is not sufficient to invalidate a boundary treaty nor to liberate it from the obligations imposed therein.

1. Emb. Rio tel., 10-28-60.

Only mutual agreement by both parties can modify its provisions or attribute competence to an international tribunal to judge questions which may arise regarding such an instrument. For these reasons, until the sovereign and agreed will of Ecuador and Peru otherwise dispose, my country considers that the Protocol of Rio de Janeiro - signed and ratified by Ecuador and Peru and already applied almost in its entirety through practical acts of demarcation to which the parties themselves attributed definitive character - is a valid instrument and should be complied with.

Moreover, my government considers that any doubts which may arise between the contracting parties in the process of practical application of the protocol in the as yet undemarcated part of the frontier should be amicably resolved in accordance with Article VII of that instrument with the assistance of the guaranteeing powers.

Based on this viewpoint and in its capacity as a guarantor country my government, faithful to formal undertakings assumed under the terms of the protocol and animated by the most sincere feeling of friendship for both contracting parties, is disposed at any moment, in concert with the other guarantors, to render them assistance in search of a happy solution of any disagreement between them.

The statement then referred to the preoccupation Chiriboga had expressed about Peruvian troop concentrations on the frontier and said that "solidarity in the face of aggression established by the inter-American system is a secure guarantee against any armed threat," and it ended on a note which might be either wistfully optimistic or cynically ironic: "The United States, together with the other guarantor countries, is confident that the contracting parties will maintain between themselves the close harmony and fraternal union which should prevail between republics of the American Continent." 1)

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1. Tel. direct from Dept. to Chiriboga, 12-7-60.

Given the linguistic and temperamental differences between the drafters and their somewhat differing viewpoints, the statement appears, even in hindsight, to have been a good one. It carefully balanced the principle of the sanctity of treaties with the possibility of revision by mutual agreement or of interpretation through reference to an impartial tribunal. However, it would be too much to expect that, in the superheated atmosphere of Ecuador, these fine points would be widely understood or that the efforts of the United States to avoid such phrases as the "unalterability" of the protocol and the "immovability" of the markers would be appreciated.

The guarantors had agreed not to release the text of the messages to Chiriboga but the news promptly leaked in all three South American capitals, and Chiriboga therefore felt obliged to publish the statement in Quito together with his comments, which he warned would be "rigorous". Popular reaction on the first day was relatively mild, but the press, especially the leftist press and radio, attacked the United States and, to a lesser extent, the other guarantors in virulent terms.

An editorial in the Diario del Ecuador, for instance, said that decadent Pan Americanism was a farce for the benefit of the strong and a mockery of the weak and that Ecuador should seek its friends in other circles. Velasco and Chiriboga both issued bitter but not especially inflammatory statements. On December 9 four different groups of demonstrators attacked the U.S. Embassy; the first, arriving before adequate police protection was furnished, succeeded in breaking 65 windows. Other U.S. installations in Quito, Guayaquil and Cuenca were also stoned as were the Argentine, Chilean and Peruvian (but not the Brazilian) embassies. Interior Minister Araujo, of known pro-Castro sympathies, said now Ecuador could see that the United States was no friend and would have to turn to the U.S.S.R. and the Soviet bloc. Crowds chanted "Rusia si-Yanquis no!" 1)

Spurred on by Araujo, the cabinet voted on December 9 to establish relations with the Soviet Union and Communist

1. Emb. Quito tel., 12-9-60; Memo of telephone conversation Bernbaum (Quito) and Lane (Dept.), 12-9-60.

China, but Chiriboga said he had received Velasco's permission to delay such action for the time being. He did, however, announce to the press that relations would be established with Czechoslovakia. Vice President Arosemena advocated withdrawing from the OAS and cancelling the invitation to hold the 11th Inter-American Conference in Quito. 1)

Naturally, the reaction in Peru was quite the reverse. The Peruvians regarded the guarantors' statements as a great victory for them, and on December 9 President Prado went on national radio and TV with a speech in which he congratulated the guarantors and himself on this step to reaffirm the sanctity of treaties. Parts of his address were interpreted as being threatening by the Ecuadoreans, and Chiriboga requested that the United States repeat the assurances of support in case of Peruvian attack contained in the December 7 statement.

At his daily press briefing on December 13 Lincoln White, the Department's spokesman, was asked whether Peru or Ecuador was contemplating the use of force. He replied negatively and went on to say that all American States were bound by the Inter-American Treaty of Reciprocal Assistance to take individual or collective action in the event of aggression. The United States, he said, would comply fully with its obligations under the treaty should need arise; in these circumstances it would be inconceivable that any attempt to settle disputes by other than peaceful means could succeed. 2)

This statement had a salutary effect on the Ecuadorean upper echelon if not on the extreme leftists. Chiriboga promised Bernbaum he would attempt to calm the "hate the U.S." campaign, and in a conversation on December 14 President Velasco expressed to the ambassador his appreciation for the Department's assurances on resisting aggression. He also said he did not intend to put Ecuador into the Soviet bloc or withdraw from the OAS. 3)

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1. Emb. Quito tel., 12-10-60.
 2. Ltr. to Congressman Kearns 3-8-61.
 3. Emb. Quito despatch 12-15-60.

In retrospect it does not seem that in the circumstances the issuance of the December 7 statement could have been avoided. The Ecuadorean authorities, following their president's lead, had allowed themselves to be swept away by a tide of popular feeling into a juridically untenable position. The sanctity of treaties, especially boundary treaties, was simply too important for too many countries to permit the Ecuadorean challenge to pass unrebuted. Chile's possession of former Bolivian and Peruvian territories rested on treaties imposed by force; Argentina and Brazil had nibbled away parts of Paraguay after the War of the Triple Alliance, and the whole southwestern United States had been wrested from Mexico. Only chaos could result from accepting the unilateral nullification of treaties.

Nevertheless the action strengthened anti-U.S. and pro-communist sentiments in Ecuador and may help account for the vigor with which Ecuador prosecuted its campaign against the U.S. tuna boats. It certainly gave the U.S. representation in Ecuador a hard time, but fortunately it did not, as Chiriboga once predicted, require ten to twenty years to restore the U.S. position in Ecuador. The Ecuadorean government did not abandon the thesis of nullity as a result of the statement, nor did anyone expect it to, but the knowledgeable Ecuadorean leaders soon realized that it held no potential as a device for settling the boundary dispute. It did, however, remain as a rallying cry in domestic politics and may at some future time serve as a minor counter-weight in boundary adjustment with Peru.

CHAPTER X

THE DISPUTE SINCE 1960

Since 1960 there has been no change in the basic position of the parties to the Ecuador-Peru boundary dispute, but its share of public attention has diminished considerably. Officially and publicly Ecuador still maintains the position that the protocol is null but has made no effort to possess any of the territory Ecuador considers to have been lost as a result of the Rio Protocol. However, the boundary issue continued to be a significant factor in inter-American relations for a number of years, and again came briefly into the public eye in 1977 and 1978.

The Boundary, the Inter-American Conference and Cuba

Although efforts to settle the boundary controversy had reached a complete impasse, the question of the 11th Inter-American Conference was still hanging fire. The objective of the United States and other American Republics was to have all the American states represented, and ways to encourage Peruvian attendance were actively sought. As a means of dissuading Ecuador from raising the boundary issue at the proposed conference, Brazil suggested at a meeting of the guarantors on March 18, 1961, that Peru and Ecuador agree to resume bilateral talks a few months after the conference had ended. While Peru's Prime Minister Pedro Beltrán was reported to be amenable to this idea, the continuance of anti-Peruvian and anti-U.S. agitation in Ecuador led to fears that riots might occur which would endanger the physical safety of the Peruvian delegation. However, on April 25 the Brazilian Foreign Minister informed Ambassador John M. Cabot that Presidents Quadros and Frondizi had discussed the matter and agreed that any move by the guarantors to propose such a scenario at that time would be imprudent; hence the Brazilian initiative was aborted. 1)

1. Emb. Rio tel., 3-18-61; Emb. Lima tel., 3-21-61; Emb. Rio tel., 4-25-61.

On January 11, 1961, the Council of the OAS had fixed May 24 - a national holiday in Ecuador - for the opening of the 11th Inter-American Conference, but as agitation mounted in Ecuador, the general consensus among the American states was that the risk of disruption for one reason or another was too great. The resolution by which the Council on May 2 again postponed the meeting went to great lengths to save Ecuador's face. It referred to political tensions in the Caribbean which had created an atmosphere of controversy entirely foreign to the work program of the Inter-American Conference; none of the reasons for postponement related to any matters under the control of the government of Ecuador; further, the presidents of Colombia, Panama and Venezuela had all requested the president of Ecuador to agree to postponing the conference to a time which offered better guarantees of success, and the president of Ecuador had acceded to this request. The conference was therefore postponed until a time to be set by the Council in consultation with the Ecuadorean government. 1)

The 11th Inter-American Conference was not the only victim of the agitation induced in part by the boundary dispute. On May 10, just eight days after the Council's action, Foreign Minister José Chiriboga presented his resignation to President Velasco Ibarra. The primary reason was that Chiriboga's strongly anti-Castro position was not in harmony with Velasco's middle of the road position and made him the target for attacks by pro-Castro elements within the Velasquista movement such as Vice President Carlos Julio Arosemena Monroy and former Interior Minister Manuel Araujo. Although Chiriboga had maneuvered with consummate skill to get the Quito Conference postponed in such a way as to do the least possible damage to Ecuador's prestige, the decision was probably resented by Velasco, who had agreed to it with the greatest reluctance. 2)

Chiriboga's successor was Dr. Wilson Vela Hervas. He announced his strong support for Velasco's foreign policy including the nullity of the Rio Protocol and

1. Organization of American States, Annual Report of the Secretary General, 1961. p. 61.

2. Emb. Quito despatch, 5-10-61.

strict adherence to the principle of non-intervention in Cuba. Back at the time of the presentation of the guarantors' statements in December 1960 the Cuban press had adopted a position of strong support for Ecuador and in favor of the nullification of the Rio Protocol. The latter was tied in principle to the abrogation of the Panama Canal treaty of 1903 and the lease on Guantánamo. In July 1961 the new Cuban ambassador in Quito, Eduardo Corona Zayas, was quoted in the weekly Amazonas as saying that Cuba had been the first country to support Ecuador's demand for the peaceful revision of the Rio Protocol and that United States imperialism was "forcing" the Peruvian oligarchy to obstruct a solution of the boundary problem. 1)

Ecuador abstained in the OAS vote to convoke the Organ of Consultation under the Rio Treaty on the Cuban situation, but at the end of 1961 relations cooled when Cuban guards in Habana shot seven persons, killing three, who were attempting to take refuge in the Ecuadorean Embassy. Foreign Minister Roa's rejection of the Ecuadorean protest over this incident led to violent polemics between right and left in Ecuador. After much agitation pro and con, relations with Cuba were suspended on April 3, 1962. 2)

The divisiveness of the Cuban issue and a deteriorating economic situation caused Velasco to place even more emphasis on the boundary issue as one on which virtually all Ecuadoreans could agree. Perhaps impelled by a Brazilian-Peruvian statement of August 3, 1961, reaffirming the inviolability of treaties, Velasco's supporters in congress declared August 17, the first anniversary of his pronouncement on the nullification of the Rio Protocol, a "Day of National Remembrance", which was celebrated by numerous nationalistic addresses.

However, despite general support for Velasco's policy, a few questions began to be asked. Some criticized Velasco for having failed to follow up his declaration of nullity with appropriate diplomatic action, such as presenting the case to the International Court of Justice. Then

1. Emb. Quito despatch, 8-3-61.

2. Emb. Quito tel. 4-3-62.

there was some concern among the military over the fact that if the protocol was void, this would return the situation to the status of January 1942, at which time Ecuador was partially under Peruvian military occupation. Hence nullifying the protocol might be opening Ecuador to Peruvian attack. Other Ecuadoreans privately expressed doubts that Ecuador's case would prosper before the ICJ since the protocol had been ratified after Peruvian troops had been substantially withdrawn. 1) None of these considerations were aired in public, however, and on October 28, 1961, the congress in joint session approved a resolution reaffirming the nullity of the Rio Protocol and rejecting the guarantors' declaration of December 7, 1960.

In spite of Velasco's playing up the boundary issue, the sands were running out on his popular support. He and Vice President Arosemena, who presided over the Senate, were now openly at daggers drawn, and Velasco's practice of packing the galleries of the congress with his supporters who shouted down opposition speakers led to fear that he was planning to assume dictatorial powers. Leftist groups, led especially by the Ecuadorean Federation of University Students, repeatedly demonstrated against him, and on November 3 two demonstrators were killed in Cuenca.

After a particularly rowdy session of congress in which Arosemena declared that Velasco had violated the constitution and could no longer be considered president, Velasco had him and several other members of congress arrested. Riots broke out in Quito and Guayaquil resulting in several deaths; the military withdrew its support from Velasco, and on November 8, 1961, he took asylum in the Mexican Embassy and left a few days later for Argentina. Carlos Julio Arosemena Monroy was sworn in as president on November 9.

Ecuador Proposes "Pacific Settlement" Procedures

Although Arosemena had been outspokenly anti-U.S. and pro-Castro, the Quito Embassy reported that his cabinet was moderate and well balanced between various political

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1. Emb. Quito despatch, 8-17-61.

groups, and the Embassy hoped that relations would not suffer greatly. 1) One of his first official pronouncements was that he would follow the policy of the preceding administration with respect to the "absolute nullity" of the Rio Protocol. This called forth a statement from the Peruvian Government that it was prepared to defend itself and the treaty, a statement the Ecuadoreans chose to interpret as "a threat of force to resolve an international situation." This seems to have been shadow boxing on both sides and nothing came of it. 2)

The boundary dispute was relatively quiescent during Arosemena's term of office. In July 1962 he visited the United States and, as customary, was invited to address a protocolary session of the Council of the OAS. He spoke of the necessity of perfecting the inter-American system of collective security - always an important topic for Ecuador which felt constantly "under the gun" with Peru. He said Ecuador remained faithful to the principle of the pacific solution of international controversies and continued:

Between Ecuador and Peru a serious problem is pending. The protocol of January 29, 1942, is absolutely incompatible with the fundamental norms and principles of American international law.

Ecuador is always disposed to submit its problem with Peru to one of the methods of pacific settlement of international controversies established in the inter-American conventions in force. Continental solidarity demands that this controversy be given a just solution which will permit the two countries to initiate fruitful cooperation and a vigorous interchange for their common benefit. 3)

Arosemena's drinking problem finally got the better of him and, after a number of disgraceful incidents which compromised Ecuador's dignity internationally, he was

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1. Emb. Quito despatch 11-9-61.
 2. Emb. Quito despatch 11-15-61.
 3. OAS, Series G/II, C-a-455 (protocolar) July 24, 1962.

removed from office on July 11, 1963, by the heads of the armed forces. Unfortunately, the last of these incidents took place at a dinner honoring the president of the Grace Lines at which Ambassador Bernbaum was present; hence Arosemena's supporters and the far-left in general was able to allege that he had been removed as a result of U.S. pressure. A military junta was installed as the executive headed by naval Captain Ramón Castro Jijón; Neftalí Ponce was named Foreign Minister. 1)

The process of recognizing the de facto government in Ecuador was complicated by the wording of the Ecuadorean note requesting recognition, which stated that the new government would respect all Ecuador's international commitments freely entered into. 2) Admiral Llosa, again serving as Peru's Foreign Minister, feared Ecuador intended to avoid committing itself to the Rio Protocol. Washington, which desired only to keep peace in the family, saw no legal problem involved since the protocol had been duly ratified by the Ecuadorean Congress, and recognition was extended on July 31, 1963. Although Peru's Ambassador Berkemeyer was informed orally that the statement of December 7, 1960, still represented the Department's position, the Department repeatedly evaded Peruvian efforts to secure a written restatement of the December 7 telegram. 3)

Indeed, it seemed for a time that Peruvian insistence on clarifying this point would force the new Ecuadorean regime into a harder position than Foreign Minister Ponce desired to assume. He had informed Ambassador Bernbaum on July 23 that Ecuador recognized that the protocol was still in effect although there were moral grounds for requesting that it be nullified. In public he stated that Ecuador's position on the boundary question was that set forth by President Arosemena in his address before the Council of the OAS on July 24, 1962 - in other words, he carefully avoided using the word "null" in putting forward his position on the Rio Protocol and left the impression that nullification could only be made effective by an (unspecified) international tribunal. 4)

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1. Emb. Quito Weeka, 7-16-63.
 2. Underlining supplied.
 3. Emb. Lima tel., 7-19-63; Dept. circ. tel. 7-24-63.
 4. Emb. Quito tel., 7-25-63.

Just when it seemed that the controversy was about to die down the Peruvian Chamber of Deputies on August 16, 1963, unanimously adopted a resolution requesting the Foreign Minister to complete the placement of boundary markers in the stretch which remained unmarked. The Quito Foreign Office at once pointed out that such unilateral action would be illegal since marking the boundary had by its nature to be a joint undertaking. Further, the terms of the protocol could not be followed in the Santiago-Zamora sector due to the non-existence of the watershed mentioned in the protocol. 1)

A new Peruvian administration headed by Fernando Belaunde Terry had taken office on July 28, 1963, which, while not prepared to surrender any of Peru's basic tenets on the boundary question, was sincerely desirous of improving relations with Ecuador and cooperating in the development of the border regions. Ecuador accepted in principle the concept of cooperating in the construction of one of Belaunde's favorite projects - the Carretera Marginal de la Selva - a highway which would roughly parallel the eastern scarp of the Andes and assist in opening for settlement vast areas of the foothills and jungles.

Responding to Ecuador's cooperative spirit, Belaunde sent Arturo García y García as Chargé d'Affaires to Quito when recognition was finally extended in September, and raised him to the rank of Ambassador in November. García was descended from the family which had negotiated the García-Herrera treaty in 1890 and counted Ecuadoreans among his ancestors. Being in addition a person of unusually agreeable personality, his appointment was a clear indication of a desire to emphasize the positive aspects of Ecuadorean-Peruvian relations. 2)

Ecuador and the OAS

On February 20, 1963, Rómulo Betancourt, President of Venezuela, addressed the Council of the OAS and made a strong point that the 11th Inter-American Conference should not be delayed any longer, pointing out that the

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1. Pérez Concha, Ensayo, 2d ed. Vol. II, pp. 520-523.
 2. Emb. Lima airgram, 9-22-63.

times were in convulsion and that international events were occurring which required concrete reactions. Dr. Neftali Ponce, then Ambassador in Washington, took Betancourt's statement to heart and urged the Foreign Office in Quito to lose no time in proposing to the Council a date for the Quito Conference.

Once he had assumed the position of Foreign Minister, Ponce was in a position to act on his own recommendation. On instructions from Quito, Dr. Galo Leoro, Ecuador's representative on the Council, proposed on September 23, 1963, that the Council fix a date for the Conference. The proposal was welcomed by the other representatives, and in due course April 1, 1964, was set.

Immediately problems began to arise. The political parties in Ecuador, eager to put pressure on the military junta, began to agitate in favor of raising (and if possible, settling) the boundary problem at the conference. The Foreign Ministry knew, of course, that if the boundary were placed on the agenda, Peru would refuse to attend. Furthermore, the overthrow of Arosemena having occurred since Betancourt's address to the Council, Venezuela and Costa Rica had refused, in line with the Betancourt doctrine, to recognize the new Ecuadorean regime, so they would also probably refuse to attend. Further, as a result of the Río Lauca controversy with Chile, Bolivia had withdrawn from active participation in the OAS and probably would not be present at the conference. With so many abstentions, the prestige of the conference would be seriously eroded. 1)

The internal situation of Ecuador was also disturbing. Besides the agitation of civilian politicians for discussion of the boundary, a strong feeling became evident among the ruling military that, if the conference were held, Ecuador would be in honor bound to raise the boundary issue. On the other hand, the senior officers also realized that Ecuador would gain nothing by raising the issue and might well reduce the conference to a shambles. In either case the result would be a further demonstration

1. Pérez Concha, Ensayo, 2d. ed. Vol. II, pp. 528-530 and 533-534.

of Ecuadorean weakness and loss of prestige for the country and for its rulers. The Embassy in Quito believed that the Junta would never be able to hold the conference; the boundary issue, it reported, remained disturbingly immediate, especially to the Ecuadorean officer corps, and it would continue to be an insuperable obstacle to Ecuador's hosting the conference. A democratic government, the Embassy thought, might have even more serious difficulties than a military one. 1)

Faced with this situation, the Junta sacked Foreign Minister Ponce on January 2, 1964, and on January 9, 1964, formally requested the Council to postpone the meeting because several countries had announced their intention not to attend. On January 20 the Council revoked the resolution it had taken only on December 3, and thus the 11th Inter-American Conference passed into limbo without ever having come into existence. 2)

The Organization of American States was at this time confronted with a serious procedural problem: it was apparent that the 11th Inter-American Conference would not be held in Quito, but Ecuadorean pride could not permit it to be transferred to another city. Meanwhile, the need for the conference had become urgent.

The function of the Inter-American Conference was to "decide on the general action and policy of the Organization" and "assign tasks to the Council." 3) The Council of the OAS, except when acting provisionally as the Organ of Consultation, was limited largely to routine administration, and there were items of pending business which the Council was not authorized to decide. Foremost of these was the question of admitting to the OAS, former British colonies which had attained independence and indicated an interest in OAS membership. There was also a growing feeling among the members that the changing times required overhauling the structure of the whole organization.

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1. Emb. Quito airgram, 5-5-64.
 2. Pérez Concha, Ensayo, 2d. ed. Vol. II, p. 540.
 3. 1948 Charter, Arts. 33 and 50.

To deal with the first of these problems, a Special Inter-American Conference was held in Washington in 1964 which set the conditions for the admission of newly independent Caribbean states. A Second Special Inter-American Conference was planned for May 1965, to take up changes in the structure of the OAS, especially the plenary sessions, and the relationship between the various councils, some of which had gained added significance due to the concentration during the early 60's on problems of economic and social development. Also placed on the agenda were "Pacific Solution of Controversies" and the "Inter-American Peace Committee" (IAPC).

These items offered what appeared to be a real opportunity for Ecuador's new Foreign Minister, Dr. Gonzalo Escudero, an experienced international lawyer and diplomat who had accepted the appointment as Foreign Minister with reluctance. Dr. Escudero was well acquainted with OAS problems and procedures having served as Ecuador's representative on the Council in the late '50's. The item on peaceful settlement of disputes provided a ready-made opportunity to air Ecuador's controversy with Peru while discussions of restructuring the OAS opened the way for proposals to eliminate the Inter-American Conference and strengthen the regional organization's authority for considering disputes. The United States also desired to expand the scope of the OAS and particularly the IAPC to deal with friction between member states.

Under great domestic political pressure Ecuador conducted a vigorous campaign to have the boundary dispute per se added to the conference agenda, but such an addition would have required a two-thirds vote of the OAS Council, a majority virtually impossible to obtain. Furthermore, on March 5 Peruvian Foreign Minister Schwalb informed the U.S. Charge, Ernest Siracusa, that if the boundary question were placed on the agenda, Peru would withdraw from the conference.

Although the item was not added to the agenda, Escudero stated that the subject would be raised in reasoned and rational terms in the hope that the conference would recommend that the dispute be referred to the International Court of Justice or to arbitration. Also during this period of preparation, the Ecuadorean Foreign Office under Escudero's direction drew up an elaborate and detailed proposal for an Inter-American Treaty of Pacific Solutions, the objective of which would be to supplement

and render effective the American Treaty for the Pacific Solution of International Controversies, otherwise known as the Pact of Bogotá. Although the Pact was a product of the 1948 Bogotá Conference, it had never entered into effect.

Unfortunately, before the Second Special Inter-American Conference could meet, anarchy broke out in the Dominican Republic in April 1965 leading to the much debated decision of the United States to use armed force to protect the lives of foreign citizens and prevent a possible take-over by elements of the extreme left. This resulted in the postponement of the Rio Conference until November. Meanwhile, a political crisis arose in Ecuador which resulted in the resignation of Dr. Escudero as Foreign Minister and his replacement by Dr. Wilson Córdova, until then ambassador in Buenos Aires. Escudero, however, was made ambassador to Brazil and so was able to form part of the Ecuadorean delegation at the conference.

Having failed to have the boundary dispute placed on the agenda, the Ecuadorean delegation opted for the next best solution: Dr. Córdova took advantage of the practice of allowing each chief of delegation to address a plenary session of the conference to devote the bulk of his address on November 20 to an exposition of Ecuador's thesis of the nullity of the Rio Protocol. He bore down heavily on Peru's invasion in 1941 and stressed Peru's refusal to comply with its promise of July 26 to withdraw its troops 15 kms. behind the 1936 status quo line. The Rio Protocol, Córdova asserted, had been the result of aggression and had been forced on Ecuador by military occupation.

Córdova then cited the various inter-American agreements requiring pacific settlement of disputes and stating that the fruits of aggression would not be recognized. He quoted the Declaration of Lima of 1938 to this effect and summed up his arguments thus:

Here is the inavoidable contradiction.... If those imperative principles and norms are juridically valid, the Rio Protocol is null. If on the contrary the latter instrument is valid, those imperative norms and principles constitute a sarcastic fiction and a great conventional lie, forged solely to deceive the people with an appearance of law which does not exist.

Córdova then pointed out that the principle that treaties must be observed applied only to valid treaties and could not apply to the Rio Protocol which was null ab initio. Given this position of Ecuador, with which Peru was in total disagreement, the falsity of the Peruvian assertion that there was no problem was clearly established. In conclusion he recalled that Ecuador had offered and was still prepared to submit its dispute with Peru to any of the means of pacific settlement provided by inter-American agreements, urged Peru to accept this offer and concluded with an eloquent appeal to "the justice of America" to recognize that hemispheric unity could not exist while international problems such as the boundary dispute existed. 1)

On the whole, Córdova's defense of the Ecuadorean thesis of nullity was one of the most complete and convincing ever made, and it did not fail to draw sparks from the Peruvian Foreign Minister, Jorge Vázquez Salas, whose turn to speak came on November 22. He rebutted Córdova's statements in the harsh language which seemed to be a Peruvian trade mark in dealing with the Ecuadorean problem. He asserted that the territory claimed by Ecuador had been Peruvian since the foundation of the Republic and pointed out that there were virtually no Ecuadoreans in the area according to the 1940 census. Ecuador had accepted and executed the protocol until only 78 kms. remained to be marked, he said, and called the Ecuadorean offer to resort to procedures for pacific solution "unreasonable" and an attempt to reopen a controversy already settled. In turn he proposed that Ecuador collaborate with Peru on the economic integration of frontier areas. 2)

There followed an incident which must have enlivened the rather dull course of the plenary sessions, where speeches were made primarily for home consumption. Dr. Córdova insisted on replying to the Peruvian despite the visible annoyance of the presiding officer. When

1. OAS, Second Special Inter-American Conference, Actas y Documentos. Vol. II, pp. 98-102.

2. OAS, Second Special Inter-American Conference, Actas y Documentos. Vol. II, pp. 124-129.

the president reluctantly assented, the entire Peruvian delegation marched out. Córdova used the opportunity in a dignified manner to repeat his invitation that Peru agree to settle the dispute through use of procedures for peaceful settlement; he then sat down. The Peruvians thereupon solemnly returned to the conference chamber. 1)

Although the Ecuadorean delegation had presented its case well, Ecuador had no luck in pushing its plans for strengthening the peacekeeping machinery of the OAS. Those who favored revision generally wished to authorize the Council to deal with disputes, especially those which did not fit the definitions of the Rio Treaty of 1947 but which were still capable of disturbing relations between states. It was also proposed to restore to the Peace Committee some of the flexibility it had enjoyed prior to 1956 and to facilitate access to the Committee or to the Council by permitting any state, or at least any party to a dispute, to bring problems to the attention of either of these bodies. This would have enabled Ecuador to bring its dispute with Peru before the OAS whether Peru agreed or not.

The United States, Bolivia, Ecuador, Panama, Uruguay and Venezuela made great efforts to have this principle accepted, but the fact that both Bolivia and Ecuador were known to desire the revision of long-standing territorial settlements assured that their neighbors would be strongly opposed. Besides Peru and Chile, Argentina, Brazil, Mexico, and eventually Colombia were among the opponents. No decision was reached in Rio, but in a meeting the following year in Panama, the key vote came from an Ecuadorian proposal in committee to amend a draft article to provide that "any party to a dispute" might appeal to the Council instead of "the parties to a dispute". The amendment was lost by a vote of six for, seven against and three abstentions. 2)

1. Pérez Gonsalves, *Essays*, 2d. ed. Vol. II, pp. 582-583. Dr. Pérez Gonsalves was a member of the Ecuadorean delegation. The episode is not recorded in the official Actas y Documentos.

2. See the author's paper, Peaceful Settlement of Disputes through the Organization of American States, Department of State, 1973 for further details.

Though concrete accomplishment was slight, Foreign Minister Córdova received a hero's welcome on his return to Quito. The Junta, the political parties, the Church and the press all praised his vigorous defense of Ecuador's position. Public opinion had remained remarkably calm on the boundary issue, and Embassy Quito speculated that informed Ecuadoreans had gained a more realistic appreciation of Ecuador's limitations in dealing with this problem. Perhaps with a view to quitting while he was ahead, Dr. Córdova handed in his "irrevocable" resignation to the Junta early in December 1965. Dr. Luis Valencia Rodríguez, a former undersecretary, was named as his successor.

A Change in Climate

The change in public attitude toward the boundary problem first noted at the end of 1965 appears in retrospect to mark the beginning of the decline of that question as a major issue in Ecuadorean political life. Not that it disappeared, but it no longer seemed to have the power to arouse the masses as in times past. Government leaders now gave the impression of going through well rehearsed motions, like actors at the 365th performance of a hit show. More and more, such demonstrations as occurred lacked spontaneity and appeared to be organized for extraneous reasons, for which the boundary problem provided a convenient excuse.

This was especially noticeable in the demonstrations on January 29, 1966, the 24th anniversary of the Rio Protocol. About 150 students demonstrated in Guayaquil while about 300 in Quito broke the windows at the US-Ecuadorean Binational Center; somehow, the United States seemed to have replaced Peru as Public Enemy #1, since there were no reports of attacks on Peruvian institutions. Leftist inspiration of the demonstrations became more obvious as they continued during February and March and were directed primarily against the Junta government of Castro Jijón. 1)

1. Emb. Quito airgrams, 2-1-66 and 2-8-66.

After two months of forcibly repressing demonstrations, the junta gave up on March 29, 1966, and was replaced by Clemente Yerovi Indaburu as interim president. Yerovi immediately announced his intention to convoke a constituent assembly and to relinquish power to a constitutional successor. His Foreign Minister, Jorge Salvador Lara, a Conservative lawyer and journalist from Quito, issued a policy statement which repeated all the standard principles of Ecuadorean foreign policy including, of course, the nullity of the Rio Protocol. This drew an immediate reaction from Peruvian Foreign Minister Jorge Vázquez Salas, who declared "in the most categorical manner" that Peru would not accept any attempt to revive "this dead issue" either directly or indirectly, "nor would Peru accept any variation in the status fixed by a valid international commitment in full force." 1)

On May 16, 1966, the Peruvian government, at the behest of the military and reportedly over the objections of the Foreign Minister, issued a Supreme Decree calling for the celebration of the 25th anniversary of the Zarumilla campaign against Ecuador which, it stated, had been undertaken to repel foreign aggression. This was too much for the Ecuadoreans to endure in silence, and on June 28 Ambassador Armando Pesantes handed in a note of protest in which he referred to Peru's "premeditated and minutely prepared attack" against small detachments of border guards and the "flagrant violation of international law." The Peruvian Foreign Office refused to receive the note because of the language in which it was drafted and because it represented inadmissible interference in matters of internal jurisdiction. The Quito government thereupon published its rejected note, and the Peruvians on June 14, repeated their earlier declaration of "irrevocable determination never to accept" any revival of the boundary issue. 2)

By this time the scene of action had moved to the streets of Guayaquil, where the press was especially virulent; several hundred students held a protest demonstration in front of the Peruvian consulate, looting a few

1. Emb. Quito airmgram, 4-11-66; Emb. Lima tel., 4-8-66.

2. Emb. Lima airmgram, 7-6-66 and tel. 7-7-66.

rocks at the American Consulate General for good measure. Again, leftist inspiration was suspected, motivated by a desire to embarrass the Yerovi government which was anxious to play down the dispute. 1)

In the end better judgment prevailed on both sides. The Peruvian Foreign Ministry assured Charge Siracusa that the speeches on July 31 would be low key and that the diplomatic corps would not be invited - a point which had been of some concern to the diplomatic representatives of the guarantor states. 2) In Ecuador the government wisely unfocused the commemoration of the occasion by dedicating the entire week of July 23-31 to honoring the fallen heroes of 1941. A series of military and civic ceremonies was staged at which war veterans understandably expressed themselves in strong terms; however, government officials including President Yerovi, were notably restrained, stressing Ecuador's interest in "peaceful and legal solutions." Embassy Quito noted a good deal of public apathy, another indication that the boundary question was losing its appeal. 3)

However, even a dying fire can often be stirred into brief flames. This occurred in the boundary dispute in the closing months of 1966. The Constituent Assembly promised by President Yerovi met and on November 16 elected Otto Arosemena Gómez to the interim presidency. Jorge Carrera Andrade took over the Foreign Ministry on December 1. On November 22 the Constituent Assembly unanimously passed a resolution reaffirming in vigorous terms the absolute nullity of the Rio Protocol. 4)

In Lima Foreign Minister Vázquez, who had been under attack for the "weakness" of his policy vis à vis Ecuador, was called to appear before the Chamber of Deputies where he raised the previous level of rhetoric a few notches by declaring, "Neither today nor tomorrow will we permit change in an authentic treaty ratified by Ecuador itself...."

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1. ConGen Guayaquil tel., 7-6-66.
 2. Emb. Lima tel., 7-15-66.
 3. Emb. Quito airgrams, 7-26-66 and 8-2-66.
 4. Emb. Quito airgram, 11-25-66.

So that this Chamber, all Peru, Ecuadoreans and all America can hear it, we say to them that Peru will first disappear as a nation before we can yield one inch of territory which we possess by history, geography and law...." 1) In response to the Foreign Minister's dramatic pronouncement, the Chamber approved a resolution expressing support for the government in the political and diplomatic decisions it might adopt - including the breaking off of relations with Ecuador. Immediately thereafter the Chamber also authorized the Executive to spend a substantial sum on military equipment. 2)

Despite all the sound and fury on both sides of the border, the Foreign Ministers refrained from extreme action. Carrera informed Ambassador Wymberley Coerr that he had no intention of raising the boundary problem in the UN or the OAS, and Vázquez assured Ambassador J. Wesley Jones that Peru did not intend to break relations with Ecuador despite the Chamber's resolution. 3)

However, the Peruvian Foreign Minister, in the course of a meeting in Montevideo and acting at the request of President Belaunde, orally requested the Foreign Ministers of Argentina, Brazil and Chile to issue another statement that the Rio Protocol could not be invalidated by the unilateral action of one of the parties. The Peruvians considered that unless the guarantors again put themselves on record, Ecuador might consider that they had acquiesced in the declaration of nullity. 4)

Not surprisingly, in view of the events of December 1960, the State Department was strongly opposed to the issuance of another statement although Argentina, Brazil and Chile were all in agreement that a statement was in order. The Department argued that the proposed statement was unnecessary, would inflame Ecuadorean opinion and contribute nothing toward solving the problem. 5)

1. Embassy Lima telegram 11-29-66.
2. Emb. Lima tel., 12-2-66.
3. Emb. Quito tel., 12-8-66; Emb. Lima tel., 12-8-66.
4. Emb. Montevideo tel., 12-10-66.
5. Dept. Circ. tel., 12-12-66.

Following a meeting of the guarantors' representatives in Rio on December 15, 1966, and notwithstanding the Department's views, it was decided that the Itamaraty should draft a note to Peru. The draft when prepared simply said that the guarantors' point of view was the same as that set forth in the notes of December 7, 1960, and that they confirmed what those notes said. 1)

Seizing upon an idea of Ambassador Edwin M. Martin in Buenos Aires, the Department requested that each of the guarantor embassies in Quito be asked to give its evaluation of the political effects in Ecuador of the delivery of the note proposed by Brazil, a suggestion to which the others reluctantly agreed. Meanwhile, the Peruvians, informed as always regarding the guarantors' deliberations, expressed pained surprise that the United States alone was holding out against the note agreed to by the other three. 2)

The Department's expectations were fully borne out by the reply from Quito drafted jointly by the American, Brazilian and Chilean ambassadors and the Argentine Charge. They said the note would produce a strong reaction among all Ecuadoreans at a time when the boundary issue was relatively quiet; President Arosemena would probably be obliged to reaffirm his previous declaration that the protocol was null and might send the guarantors a note to this effect - a step the Ecuadorean government had never yet taken; the press would magnify aspects unfavorable to the guarantors and the Communist-dominated University Students Federation would organize a mass demonstration against the guarantor embassies. In sum, the draft reply would provoke reactions the scope of which would be impossible to predict and doubtless affect relations generally with the guarantor countries. 3)

The evaluation from Quito strengthened the Department's determination to avoid a substantive reply. However, the Department noted that the Peruvian request for a new statement had been conveyed orally by the Foreign

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1. Emb. Rio tel., 12-16-66.
 2. Dept. Circ. tel., 12-16-66; Emb. Lima tel., 12-22-66.
 3. Emb. Quito tel., 12-27-66.

Minister. Why not reply the same way? Assurances could be given separately by the ambassadors in Lima in accordance with a prearranged formula. Upon receiving the acquiescence of the other guarantors, the Department proposed that the following message be delivered to Foreign Minister Vázquez separately by each ambassador: "Pursuant to the oral request made by you at Montevideo, I have been authorized to reply orally that there has been no change in the attitude of my government with respect to the Rio Protocol of 1942 since the last formal statement of that attitude in 1960." 1)

Meanwhile, another storm had arisen between Ecuador and Peru. On the last day of 1966 Foreign Minister Vázquez called in Ambassador Jones and informed him that Ecuador had protested the granting by Peru of an oil concession well within Peruvian territory and that after full consideration it had been decided to recall the Peruvian Ambassador from Quito so as to leave no doubt about the strength of Peruvian reactions. After this move was announced in the press, President Arosemena decided that Ambassador Pesantes, who was already in Quito for the holidays, would not be sent back to Lima.

The guarantors met in Rio on January 6, 1967, and agreed to the Department's suggested oral message with the variation that instead of saying there had been "no change" in the attitude toward the protocol, the message would "confirm" the attitude. Delivery of the messages was delayed until January 14 because Vázquez had gone on a visit to the Ecuadorean frontier, arousing a storm of apprehension in Ecuador that he was going personally to set boundary markers in place in the disputed zone. Actually, Vázquez did not go near the disputed zone and on his return received the assurances of the guarantors.

In the end, Vázquez outsmarted the guarantors: on January 17 he sent each guarantor embassy a first person note repeating the statement which had been made orally and expressing the satisfaction of the government of Peru. Thus he succeeded in placing on the written

1. Emb. Rio tel., 1-4-67; Dept. Circ. tel., 1-5-67.

record what the guarantors had hoped to keep oral. However, the Secretary General of the Foreign Ministry a few days later assured Ambassador Jones that Peru would not publish its note and had no intention of unilaterally setting up markers in the disputed area. Nevertheless, the Ecuadorean government learned of the oral assurances and Foreign Minister Carrera was reported to be furious. 1)

This incident of the renewed assurances assumes slightly greater importance since, so far as I have been able to determine from the Department's records, it was the last occasion, up to the present, on which the guarantors took any action. No further meetings are of record.

Fisheries and Détente

Reference was made above to the circumstance that the United States seemed to be replacing Peru as Public Enemy #1 in Ecuador. Some of this apparent change in sentiment was due to the assiduous work of Communists and Castroites whose opposition to the United States was a matter of political ideology. Such elements were especially active in the labor movement and among university and secondary school students. The Bay of Pigs affair and especially the disembarking of troops in the Dominican Republic in 1965 created opposition among Ecuadoreans who were not necessarily left-leaning. However, the issue which most effectively soured US-Ecuadorean relations and which tended to draw Ecuador and Peru together was the problem of high seas fisheries. An examination of this question is beyond the scope of this paper, but a brief reference is needed to put events in perspective.

In 1952 Chile, Ecuador and Peru declared the waters off their coasts to a distance of 200 miles to be a maritime zone for the conservation of fisheries, and just before leaving office in November 1966, the Yerovi administration extended its claim to include the entire 200 mile belt in Ecuador's territorial sea. The United States declined to recognize this or many similar claims by

1. Emb. Lima tels., 1-13-67, 1-17-67 and 1-20-67; Emb. Quito tel., 1-24-67.

other countries, and as early as 1955 incidents involving US tunaboats being hauled into Guayaquil had taken place. However, in 1963, while Neftali Ponce was Foreign Minister under the Castro Jijón junta, an informal modus vivendi was arrived at under which Ecuador would not molest US fishing boats 12 miles or more offshore, while any desiring to fish within the 12 mile limit would be required to purchase Ecuadorean licenses. The modus vivendi was terminated before the junta left office but had been respected in practice by the Yerovi administration.

When the Constituent Assembly met in November 1966 Carlos Julio Arosemena raised the fisheries issue and threatened to charge former Foreign Minister Ponce with treason. Politicians of all stripes united in attacking the United States; charges of piracy were freely flung about. Embassy Quito sadly concluded that US-Ecuadorean relations had reached a low ebb. On January 7, 1967, three fishing boats were brought into Salinas by an Ecuadorean naval tug and given stiff fines, and on January 24, the Assembly adopted a resolution stating that the 1963 modus vivendi had "diminished the sovereign rights of Ecuador over its national territory" and directed the executive to punish those responsible. 1)

The "tuna war" dragged on with varying degrees of intensity until it reached something of a climax in 1971 when Ecuador called a Meeting of Foreign Ministers -the 14th MFM - to hear charges that the United States was coercing Ecuador in violation of Article 19 of the amended OAS Charter because it had, as required by law, suspended military assistance to Ecuador following the capture of US fishing vessels in the 200-mile zone. Peru, which was also going through an anti-US period, acted as floor manager for Ecuador at the two day MFM and far exceeded its principal in vituperative language.

The development of common action with Peru over the fisheries question coincided with a sharp decline in agitation on the boundary question. It tended to demonstrate the validity of the Department's long-held thesis that if relations between Ecuador and Peru could

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1. Emb. Quito airgrams 1-15-67 and 1-29-67.

be improved by cooperation on projects of mutual interest, tension over the boundary would subside. Unfortunately, the issue which brought them together turned out to be one which united both against the United States.

Oil on Troubled Waters

The approach of the 25th anniversary of the Rio Protocol on January 29, 1967, caused grave apprehensions in both Lima and Quito, and consequently in Washington. In addition to irritation because of Ecuador's persistence in proclaiming the nullity of the protocol, the Peruvians also resented Ecuador's protest against Peru's letting oil concessions in parts of the Oriente the latter considered clearly within its territory. 1) On their side the Ecuadoreans informed Ambassador Coerr that they feared an invasion and urged sending the Army Attaché to the border "to witness the Peruvian attack", a request with which the Department did not concur. 2)

In the event the day passed without serious incident: there were no border disturbances, much less attacks, and President Otto Arosemena issued a statesmanlike proclamation expressing the hope that the controversy might be settled by juridical procedures. A Peruvian demonstration on the night of January 28 ended peacefully with no assaults on the near-by Ecuadorean Embassy while in Guayaquil the police prevented attacks on Peruvian installations; the only casualty was the steel shutter on the US-Ecuadorean Binational Center, which was damaged by a Molotov cocktail. 3)

In March 1967 came the electrifying news that the Gulf-Texaco team prospecting for oil in the Oriente had brought in a well at Lago Agrio, just north of the Aguarico River close to the Colombian border. This proved to be the first of a series of successful discoveries which

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1. Emb. Lima tel., 1-26-67.
 2. Emb. Quito tel., 1-26-67; Dept. circ. tel., 1-26-67.
 3. Emb. Quito tel., 1-29-67; Emb. Lima tel., 1-29-67; ConGen Guayaquil airgram, 2-1-67.

culminated in the construction of a pipeline across the Andes to the port of Esmeraldas and to Ecuador's becoming a member of OPEC.

For the first time, it seems, attention in Ecuador was focused, not on what Ecuador had lost, but on what Ecuador still retained. According to Dale V. Slaght, an American student who surveyed educated opinion in Ecuador in 1970-71, the view was widely held that oil had been discovered in that relatively small area which had been on the Peruvian side of the 1936 status quo line and which had been given to Ecuador in the 1942 Rio Protocol. Slaght reported that since 1967 there had been virtually no editorials on the protocol in El Comercio, a leading newspaper, and that the head of the editorial staff attributed this to a "tacit understanding" that the protocol issue ought not to be revived because oil had been found in the area ceded to Ecuador by Peru. In fact, the Lago Agrio discovery was not in that zone, but it is possible that other discoveries were made subsequently further to the east. 1)

Whether or not the discovery of petroleum in Ecuador's northeastern territory was a principal determinant, there is no question but that a new spirit became evident in Ecuadorean-Peruvian relations. On June 12, 1967, President Otto Arosemena named Julio Prado Vallejo to be Foreign Minister. Shortly thereafter, Prado informed Ambassador Coerr that he was attempting to bring about a new era in relations with Peru and that plans for sub-regional economic integration were underway in a cordial atmosphere. In November of that year Ecuador and Peru agreed to exchange ambassadors again, and even the rhetorical temptations of a presidential campaign in which José María Velasco Ibarra was a candidate for a fifth term were not sufficient to destroy the relative calm on the Ecuadorean-Peruvian border.

Velasco Ibarra has had few peers in his ability to charm the electorate. Perhaps better than most he

1. Dale V. Slaght, "The New Realities of Ecuadorean-Peruvian Relations: A Search for Causes" in Inter-American Economic Affairs, Vol. 27, No. 2 (Autumn, 1973), p. 3ff.

sensed the general weariness with the nullity thesis he had done so much to initiate. In any case, in an interview with a group of foreign correspondents on August 28, 1968, just before his inauguration, Velasco enunciated a new policy; he said, "The policy concerning the Rio Protocol must be changed. We must reach an honorable accommodation so that Ecuador has a port on the Amazon River." 1) Again, in a speech on August 29 Velasco said that jingoistic slogans about the Amazon would accomplish nothing and that to obtain an Amazonian port Ecuador needed practical, intelligent diplomacy.

The following day Velasco defended his new departure by saying:

Naturally, up until now, I supported the nullity of the Protocol because I had to wake up the nation, I had to raise up its spirits. Our basic policy is the defense of Ecuadorean rights to the Eastern Amazon.... Within this policy, accommodations are possible....

If we want something positive for the country, we must function on a practical, skillful level which may influence American consciences, which may sway friendly countries by its practical and essential justice. It is because of this that I have proposed an honorable accommodation that might give Ecuador a port on the Amazon river which justice demands. 2)

Neither Velasco nor his foreign minister, Rogelio Valdivieso, apparently had any concrete ideas about how to achieve this "honorable accommodation", but their position signaled a move away from the nullity thesis towards one of greater flexibility. Nor was the reception of Velasco's remarks in Peru particularly encouraging. Foreign Minister Herculles denied that Ecuador had any territorial "rights" in the Amazon basin, but he went on to recall that Article VI of the Rio Protocol gave

1. Slaght, "New Realities..." p. 11.

2. Slaght, "New Realities..." p. 12 from El Tiempo, August 31, 1968.

Ecuador certain navigational rights on the Amazon and its northern tributaries and said Peru was ready to fulfill its obligations under the treaty. 1)

With this exchange which soft pedalled the harsh acerbities so long associated with the boundary situation, the dispute went onto the back burner, and energies were concentrated on other matters which tended to draw Ecuador and Peru together rather than to divide them. In addition to the defense of the 200 mile maritime zone, the two countries were both members of the Andean Pact and on July 5, 1971, they signed two border integration agreements: one set up a permanent Ecuadorean-Peruvian Economic Commission to study economic and commercial relations and projects for joint development of frontier areas; the second agreement was to facilitate border transit.

Further evidence of the détente in relations came with the visit in November 1972, of Ecuador's Foreign Minister, Lucio Paredes, to Peru where he was met at the airport by his Peruvian opposite number, Miguel Angel de la Flor Valle, and received by President Juan Velasco Alvarado. Their joint statements stressed defense of the 200-mile territorial sea and attacked US fishing legislation; further agreements for the economic and social development of the western frontier sectors were signed, and the Rio Protocol was not mentioned. 2)

The Carter Initiative

In addition to these indications of a thaw in Ecuadorean-Peruvian relations, there began to be signs of even more constructive discussions. These were as tenuous as wisps of smoke, and they involved direct contacts between Peruvian and Ecuadorean officials in which neither the United States nor any of the other guarantors participated. Our information regarding this is fragmentary, and it is likely that more information will become available as time passes.

1. Emb. Lima tel., 9-5-68.
2. Emb. Lima airgram, 11-7-72.

1974 was a year of unusual tension on South America's Pacific coast. Peru had acquired large shipments of sophisticated armaments, mostly from the Soviet Union. In Chile, the military had in the previous year overthrown the government of Socialist Salvador Allende, a revolution followed by severe repression of opposition elements. Chile faced a Peru which, after decades of military inferiority, had suddenly achieved superiority in materiel over Chile on land and in the air. At the same time, the harshness of Chile's military regime alienated the support it normally enjoyed from the United States and other democratic countries, while the return of Perón to Argentina created an unknown factor on Chile's trans-Andean frontier.

Worst of all, from a psychological point of view, was the approach of 1979, the 100th anniversary of the War of the Pacific in which Peru and Bolivia lost extensive territory to Chile. It was calculated that by 1979 Peru would have thoroughly mastered the use of its new weaponry, and speculation was rife in the press and on the cocktail circuit that in the centennial year, Peru would endeavor to recover her lost provinces. At the same time Bolivia was continuing its agitation to obtain a seaport on the Pacific under its sovereign control.

While Ecuador by itself posed no military threat to Peru, it seemed obvious that, in the event of trouble with Chile, Peru would wish to secure its northern border with Ecuador. Whether or not the speculations were founded in fact, contacts were commenced early in 1974 through veteran Peruvian diplomat Carlos García Bedoya, later to serve as ambassador to the United States and foreign minister. He was apparently successful in ironing out a dispute regarding a Peruvian oil concession in or near the undemarcated section of the frontier, and later in 1974 he raised the boundary question with the Ecuadorean Foreign Ministry with a view to encouraging Ecuador's attendance at the sesquicentennial of the battle of Ayacucho, marking the decisive defeat of the last major Spanish force in South America and the definitive achievement of Peruvian independence. The approach to the boundary problem was to have been gradual; a first step would have been a public announcement that Peru recognized Ecuador as an Amazonian country, after which the president of Ecuador would attend the ceremonies at Ayacucho in December 1974. Working out the details of a territorial settlement would require more time. For whatever reason,

however, the proposed declaration was not issued, and Junta President Rodríguez Lara did not go to Ayacucho. 1)

Many indications of improved relations were noted in 1975 and 1976. Peru conferred a decoration on Ecuador's president, and there were many exchanges of military and other official visits and increased economic cooperation along the inhabited portions of the joint boundary. Vice Admiral Alfredo Poveda replaced Rodríguez Lara as president of Ecuador in January 1976, and in July of that year Ecuador sent special emissaries to Lima. They made little concrete progress on any territorial settlement, but it was felt important to keep conversations going.

Again discussion centered on a possible declaration acknowledging Ecuador as an Amazonian country with right of access to the Amazon while for its part Ecuador would acknowledge the continuing validity of the Rio Protocol. To Ecuador, "access" meant sovereign territorial access; contemporary observers questioned whether Peru would go that far, but the Ecuadoreans were encouraged. Both Foreign Ministers restated their positions in conciliatory terms at the United Nations General Assembly in October 1976 and exchanged abrazos - a far cry from Peru's walk-out at the Second Special OAS Conference in 1965. However, in Ecuador former Foreign Minister Julio Prado, writing in El Tiempo, charged that Peru had simply reaffirmed its intransigence and was unwilling to negotiate.

A meeting in August 1977 in Santiago, Chile, commemorating the 25th anniversary of the Declaration of Santiago on protection of maritime resources provided another opportunity for Foreign Ministers de la Puente and Ayala to carry on further discussions of the access and boundary problems. Thus a generally favorable atmosphere prevailed when Presidents Francisco Morales Bermúdez of Peru and Alfredo Poveda of Ecuador came to Washington at the invitation of President Carter to witness the signing of the Panama Canal Treaties in September 1977. In separate,

1. Emb. Lima tels., 1-16-74 and 1-18-74; Emb. Quito tels., 1-9-75 and 1-23-75.

private talks with the presidents, President Carter referred to the desirability of settling the boundary dispute and expressed the hope that Ecuador's aspiration for access to the Amazon might be realized. In reporting his bilateral conversations to the press, President Carter said, with reference to his meeting with President Morales Bermúdez, "We discussed a number of items with Peru.... We also discussed matters that concern other countries - the possibility of Bolivia's having access to the Pacific Ocean, which they lost about a hundred years ago, and the possibility that Ecuador might have access to the Amazon River, which they desire very much." 1)

Of his meeting with President Poveda on September 8, President Carter said in part, "We discussed the statement by the Peruvian President that additional purchase of arms and weapons by Peru was not planned, the gratitude that we have for improved relationship between Ecuador and Peru. We discussed the future possibility of access by Ecuador to the Amazon River, although the prospects are not good at this point. The discussions, I think, will be accelerated in the future." 2)

The Ecuadorean leaders and people were tremendously enthusiastic not only about President Carter's having raised the subject of access to the Amazon in his conversations with the two presidents but also because he had mentioned it in a public statement. Their enthusiasm was heightened by the fact that, in reporting President Carter's statements to the press, El Comercio of Quito omitted the clause, "although the prospects are not good at this point". In the euphoria which followed the Washington conversations, it was easy for wishful thinkers to assume that the American president intended to take further steps to help Ecuador realize its long-held aspirations.

President Poveda's public remarks were deliberately low key but still aroused great expectations. He said that in his talk with President Morales Bermúdez they had discussed matters of the greatest importance and

1. State Department Bulletin, Vol. LXXVII, No. 1999. 10-17-77, p. 512.

2. State Department Bulletin, 10-17-77. pp. 514-515.

had "given clear instructions to our foreign ministers that they were immediately to implement measures and actions which will lead us to just and realistic solutions by means of a friendly and constructive dialogue". 1) Morales Bermúdez was even more restrained in his comments on his return, simply mentioning Poveda among others with whom he had talked in Washington. 2)

The Ecuadorean strategy appeared to be to obtain a corridor leading from the last approved boundary markers to the Marañón. Although access to the Marañón at the confluence of the Santiago would offer little practical advantage to Ecuador since the Manseriche Rapids bar navigation downstream, the psychological gains were considered to outweigh the practical disadvantages.

While the Peruvian Foreign Ministry undoubtedly understood the Ecuadorean objective, it soon became clear that their concept of "access" was limited to the free navigation of the northern tributaries of the great river as set forth in Article VI of the Rio Protocol with perhaps the addition of a free port at a point favorable to navigation. As early as September 21 Ambassador Carlos García Bedoya in Washington expressed concern that the press in Ecuador had exaggerated considerably the implications of the discussions and emphasized that the formula for "access" would have to be within the juridical framework of the Rio Protocol. Acting Deputy Assistant Secretary Devine explained to him that the United States simply desired to encourage discussion and if possible resolution of this long-standing problem.

Although Foreign Ministers Ayala and de la Puente had "friendly discussions at the UN General Assembly in New York early in October 1977, the problem of the implications of "access" continued unresolved. Furthermore, although President Morales Bermúdez and Foreign Minister de la Puente gave every evidence of a sincere desire to reach an understanding with Ecuador, the problem of reconciling Ecuador's insistence upon sovereign continuous

1. Embassy Quito tel. 9-15-77.

2. Foreign Broadcast Information Service for 9-12-77 quoting AFP, Paris. p. J-1.

access with the resistance in Peru's military and political circles to any territorial concessions proved insurmountable.

As surely as the Loch Ness monster may be expected to appear in Scotland's summer, the summer season south of the equator brought on the usual batch of border incidents. A Peruvian patrol boat intercepted an Ecuadorean fishing boat allegedly in Peruvian waters, fired on it and killed one fisherman. Clashes between patrols took place in the undemarcated zone, and on January 18, 1978, the Peruvian Foreign Ministry issued a strong communique listing a number of Ecuadorean "provocations".

The tone of this document was so threatening that President Poveda personally telephoned President Morales Bermúdez to clarify the situation. It was arranged that General Pedro Richter Prada, Peruvian Chief of Staff, and his Ecuadorean counterpart, General Raul Cabrera Sevilla, should meet at the frontier to work out ways of avoiding such incidents in the future. The two generals and their aides apparently had little difficulty in reaching agreement on keeping patrols at their bases and out of the undemarcated zone. It seems that, even with the best maps available, the patrols frequently got lost and were genuinely in ignorance of the location of the boundary even in delineated areas. As regards the 1978 incidents, the tone of the Peruvian communique - so much harsher than warranted by the nature of the incidents - was apparently connected with the call for a general strike for January 23rd, a strike which was called off on January 19th citing the "gravity of the national defense situation" as the reason.

Tension relaxed quickly after the meeting of the Chiefs of Staff. On January 25, 1978, Foreign Minister de la Puente told a press conference that the incidents were a result of undefined border areas and that the demarcation problems between Ecuador and Peru could be overcome in accordance with the treaties in force between the two countries; he hoped all problems would be solved through diplomatic dialogue. José Ayala, the Ecuadorean Chancellor, naturally found this clear allusion to the Rio Protocol somewhat disturbing but was pleased that Peru had not seized on the incidents as a pretext to break off the boundary talks. In a statement to the press also on January 25 Ayala announced that Ecuador and Peru had been carrying on preliminary conversations

in search of a formula to permit a just solution to the boundary problem.

The House of Cards Falls

On February 9, 1978, in commemoration of the discovery of the Amazon by Francisco de Orellana on February 11, 1542, the Government of Ecuador inaugurated the National Institute for Colonization of the Amazonian Region of Ecuador (INCRAE), and Foreign Minister Ayala gave the principal address. As might be expected on such an occasion, Ayala reviewed Ecuador's contributions to the discovery and early settlement of the area and said that at present Ecuador was limited in its eastern region to tributaries which could not fully perform the function of development and communication. He stated that the president of a "noble and friendly country" had recently asserted Ecuador's right to a sovereign presence on the Amazon and mentioned that Ecuador and Peru had taken preliminary steps toward such a definitive solution. He concluded that such a solution must be "based on justice...and must recognize the essential and irrevocable rights of Ecuador over the Amazon Basin". 1)

The final portion of Ayala's address caused Peru to suspend the talks on the boundary which were in any case doomed to failure because of the differing interpretation the two Foreign Offices placed on the word "access".

The reaction to Ayala's speech was a blast from the Peruvian Foreign Ministry on February 11 expressing its "most frank" rejection of the content and motivation of his remarks. It said the recent conversations had been designed to overcome, within the framework of the Rio Protocol, Ecuador's unjustified opposition to taking advantage of the rights which that instrument gave it. The communiqué chastised Ecuador for declaring the protocol null and said Ecuador had never been a riparian nation on the Amazon; Peru was prepared to negotiate a navigation treaty to accord Ecuador its rights under Article VI

1. Embassy Quito tel. 2-11-78.

of the protocol, but Ecuador's demands were totally unacceptable to the Peruvian people and impossible to satisfy; peaceful relations could only be achieved on the basis of respect for the protocol which, being a boundary treaty, was perpetual. The Peruvian statement also contained a veiled threat: Ecuador's claims imperilled the plans being made by Brazil for multilateral cooperation in the Amazon area. 1) This last was a hint that Peru might again, as it had in the past, object to Ecuador's inclusion in the international organization being promoted by Brazil for cooperation in the development of the Amazon basin.

Peruvian press comment was even more outspoken: El Comercio of Lima said Ayala had returned to the unprofitable game of baptizing Ecuador as an Amazonian country with waters which did not belong to it; La Prensa said, "There is no Ecuadorean Amazon question except in the confused imagination of some people"; and an incredible number of Peruvian organizations of the most diverse political hues joined in the attacks on Ayala's speech.

Ayala's reference to a supportive statement of a foreign president also proved unhelpful to his cause for those who took the trouble to track down the statement referred to. It turned out to have been in a speech by Venezuela's Carlos Andrés Pérez, who had simply listed "Ecuador's rights as an Amazonian country" as one of a number of inter-American problems which should be resolved. 2)

The net result of Ayala's address was that Peruvian officials both in Lima and Washington closed ranks behind 100% support of the literal interpretation of the Rio Protocol. Any "give" which may have originally existed in the Peruvian negotiation disappeared in a reiteration of Peru's juridical position, including mention of a possible request that the guarantors repeat their 1960 statement affirming the continuing validity of the protocol. Ecuador for a time feared that Peruvian verbal ferocity might presage some kind of military threat,

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1. Embassy Lima tel. 2-13-78.
 2. Embassy Caracas tel. 2-16-78.

but a visit to Peru by the Ecuadorean Chief of the Joint Staff, Vice Admiral Renán Olmedo, coincidentally with a visit by Ecuador's new naval training ship, Guayas, in March 1978, succeeded in relaxing tensions for the time being. 1)

Subsequent efforts by various countries including the United States to get conversations started again have been in vain. US officials have made clear their hope that progress toward a settlement could be made while at the same time emphasizing that the United States was not backing any specific solution but left it to the parties concerned to work out a mutually acceptable plan.

Prospects at the time of writing (April 1979) do not appear favorable. Peru and Ecuador are both in the process of returning to democratic forms of government; hence both the existing governments are considered to be of limited duration and are prepared to leave such important and politically sensitive matters as the determination of national boundaries to the expected popularly based and constitutional administrations.

The 1978 presidential election campaigns in Ecuador went off without the boundary question becoming an issue. This may have been due in part to careful briefing of the candidates by the Foreign Ministry, but it may also reflect the weariness of the Ecuadorean electorate with sterile discussions of Ecuador's rights to a territory where few Ecuadoreans chose to settle when it was a no-man's land. In his annual report on foreign policy for 1978, Foreign Minister Ayala reported, in sorrow rather than in anger, that Ecuador had sought by means of a friendly and creative dialogue a solution of the question of Ecuador's rights in the Amazon. He conceded that "different developments have had a negative impact on the dialogue" but stated, "the Foreign Ministry has not changed its fundamental objective, which is to seek through peaceful means a just solution of the territorial problem with Peru". 2) Thus the play returns to square one.

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1. Emb. Lima tel. 3-17-78.
 2. Embassy Quito tel. 1-19-79.

As the principal beneficiary of the Rio Protocol, Peru has no interest in stirring up the dispute so long as the protocol is respected. In November 1978 a movement was set on foot in the Second Committee of Peru's Constitutional Assembly to have a specific reference to the Rio Protocol included in the new constitution as defining the nation's boundaries. As it worked out, the new constitution, promulgated on July 12, 1979, did not single out the Rio Protocol but provided in Article 103 of Chapter V - Treaties - that

When an international treaty contains a stipulation which affects a constitutional disposition (e.g. Chapter III - Territory), it must be approved by the same procedure called for in amending the constitution before being ratified by the President of the Republic. (Informal translation)

The effect of this clause is to require that any change in the boundaries would have to be approved by two different congresses. If there were any real prospect of Peru's consenting to an alteration of the Rio Protocol, this procedure would tend to discourage it, but since in fact there seems virtually no likelihood that any significant change would be agreed to, the inclusion of such a clause in the new constitution is not a matter of great moment.

It will be recalled that Article IX of the protocol authorizes reciprocal concessions to adjust the boundary to geographic reality; thus a degree of flexibility is built into the treaty itself, although hardly enough to bring Ecuador's territory to the Marañón. It therefore appears that Ecuador's future as an Amazonian state will depend on the use it makes of the territory it possesses under the protocol and the concession of free navigation of the northern tributaries granted in Article VI. In the chapter following we shall consider the opportunities open to Ecuador within the existing juridical framework.

CHAPTER XI

ECUADOR AS AN AMAZONIAN STATE

Communications with the Oriente

The difficulty of overland communication between the Oriente and the centers of Ecuadorean population in the Andes and along the coast has since colonial times been the single most serious obstacle to Ecuadorean settlement in and control over the vast area east of the Andes to which Ecuador has laid claim. Spurred on by hope of riches in gold and spices, the early conquistadores made vigorous efforts to explore the area; we have seen how Orellana set forth on his fantastic journey down the Amazon with every intention of returning to Quito but was unable to stem the swift current of the Napo River, and how Gonzalo Pizarro and the survivors of his band finally made their way back on foot, arriving more like skeletons than men.

Small amounts of alluvial gold were found in some of the streams, and attempts were made to establish settlements, some, like Sevilla de Oro, with highly optimistic names. Few of these lasted long since the area proved extremely inhospitable, even to the tough Spaniards of the 16th and 17th centuries: between illness due to the hot, humid climate and attacks by hostile Indians, most settlements were abandoned after a few years and returned to the wilderness. Neither gold nor spices were found in quantities adequate to compensate for the hardships and dangers of life in the Oriente.

In about 1616 a group of soldiers, pursuing marauding Indians, passed the Manseriche Rapids and discovered on the other side a tribe of Indians called Mainas who were not hostile and, unlike most, were sedentary. A native of Loja, now in Ecuador, don Diego Vaca de Vega, undertook the conquest of the region and in 1619 established a settlement called San Francisco de Borja, named less to recall the saint than to compliment the Viceroy of Peru who had the same name. Borja is located on the left bank of the Marañón and served as the seat of government for the newly organized province of Mainas of which Diego Vaca de Vega and his descendants served as governors until 1695, gradually expanding the area nominally under their control along the rivers tributary to the Marañón.

The task of Christianizing the natives was as always an important consideration for the governing authorities. About twenty years after the foundation of Borja the Jesuits began their missionary work in the area; further north along the Napo and the Putumayo the Franciscans established missions while the Dominicans and Mercedarians participated to a lesser extent. The system used was the same as that which achieved greater success in Paraguay: the Indians were "reduced" to live in villages instead of wandering at random through the jungles and to adopt an agricultural rather than a hunting mode of life.

Unlike the Guaraní, who took readily to communal life, the Indians of the Ecuadorean/Peruvian Oriente, with few exceptions, tended either to wander off on any or no excuse and resume their former ways, or they would suddenly, for no known reason, set upon and kill the missionaries. Among other pleasant amusements, the supposedly friendly and converted Indians sometimes deliberately upset canoes in which the missionaries were traveling so that they drowned in the rivers. In his classic Historia General de la República del Ecuador, Father Federico González Suárez describes graphically the unbelievable conditions under which the missionaries had to live, added to which their efforts were frequently in vain. 1)

In 1707 Fr. Juan de Narváez claimed that the mission territory contained 37 villages and 26,000 baptized Indians, but 20 years later, the governor of Mainas, Luis de Itúrbide, who visited all the villages, reported "in the interests of truth" that he had found 960 male Indians and 4,903 persons of all kinds gathered in 12 villages, not counting some Indians along the Napo who had been baptized but had subsequently fled into the forests. Itúrbide added that he could not return to the district because his health was ruined and he no longer had the strength to walk over such rough paths and in such a severe climate. 2)

1. 2d. ed., Vol. X, p. 89 ff.

2. Cornejo and Osma, Arbitraje de Límites, Vol. III, Doc. No. 86, p. 216 ff.

It will be recalled that a major reason for Francisco Requena's recommendation that the trans-Andean area be transferred from the Audiencia of Quito to the Viceroyalty of Peru was that troops could not be moved from Quito to defend the upper Amazon against Portuguese encroachments. He reported in 1779 that Borja had been abandoned several years before and that the capital of Mainas was located at Omaguas, on the north bank of the Marañón five days upriver from the mouth of the Napo.

In 1768 the Jesuits were expelled from Ecuador as they were from all Spanish territories, and the missions were turned over first to secular priests and later to Franciscans. Still later the Court at Madrid ordered that the Franciscans be withdrawn from the missions, and they were again turned over to secular priests who were hastily ordained for the purpose with little prior training. The decline of the missions was rapid in these circumstances. Many were abandoned completely, and the remainder were greatly reduced in populace.

During the 19th century little was done to improve communications between the inhabited portions of Ecuador and the Oriente. It will be recalled that the government in 1857 attempted to discharge a portion of its foreign indebtedness by turning over to British creditors a tract of land around Canelos, against which Peru protested vigorously. Friedrich Hassaurek, American Minister in Quito during the administration of Abraham Lincoln, vividly described the land communications between Quito and the Oriente as well as commenting on the political methods of President García Moreno. He said that anyone suspected of revolutionary intentions was arrested and kept in heavy irons for weeks or months. He was then generally banished "to the unredeemed wilderness on the eastern side of the Cordillera, commonly called the Napo country from the Napo River - one of the affluents of the Amazon - or to Brazil by way of the Napo." He continued:

To understand fully the inhuman nature of this punishment, it must be borne in mind that the road to the Napo, beginning at the village of Papallacta - about two days journey from Quito - is a mere foot-path, inaccessible to horses or mules. The prisoners, with their limbs sore from the irons in which they had been kept, had to walk over rocks, and scramble through bogs and woods; now descending the cold and snowy summits of the Cordillera, then

wading through deep and rapid streams; now exposed to the almost incessant and drenching rains of those regions, then again to the burning sun of the equator; with no provisions but those they carried with them, with no bed but the wet earth, and no cover but the sky, until they reached their inhospitable destination where only the painted Indian's humble hut afforded them shelter, without protection from wild beasts, poisonous snakes, and tropical fevers. 1)

Even making allowances for literary hyperbole, it is evident that travel in the Oriente was not for sissies. In fact, Hassaurek's description of his own travel by horse and mule from Guayaquil to Quito would make most present-day diplomats decline the assignment.

President Gabriel García Moreno did more than exile his political opponents to the eastern wilderness: he also attempted to re-establish Ecuadorean presence there by encouraging missionary activity. One of his first acts after assuming the presidency in 1861 was to send secular priests to reopen the missions, and in 1869, just over 100 years after their expulsion, the Jesuit order was re-admitted to Ecuador and instructed to send missionaries into the Oriente. At one time the order maintained 35 missionaries in the region, but when the anti-clerical Liberals came to power in 1895, the Jesuits were again expelled and, according to Julio Tobar Donoso, this "bastion of our national rights" was disorganized or destroyed for "simple sectarian prejudice." Meanwhile, Peru carried on a vigorous policy of missionary penetration. 2)

From colonial times to the 20th century four routes provided limited and difficult access from Ecuadorean population centers to the headwaters of Amazon tributaries and to the small settlements on the eastern side of the Andes:

-- From Quito via Papallacta to Baeza on the Quijos River, which flows into the Coca which in turn is tributary to the Napo. This was the route followed by Gonzalo

1. Friedrich Hassaurek, Four Years Among Spanish-Americans. New York, 1867. pp. 223-224.

2. Tobar Donoso, Invasión Peruana, pp. 48-49.

Pizarro, Francisco de Orellana and other early explorers. Orellana departed on his long voyage to the Atlantic from the junction of the Coca and the Napo, where the little town of Coca has been renamed Francisco de Orellana. This site remains well within present Ecuadorean territory.

-- From Ambato and Riobamba through a pass via Baños to Puyo near the Pastaza River. Canelos was an early settlement in this area and the site in colonial times of a Dominican mission. Puyo is also not far from the headwaters of the Napo.

-- From Cuenca the Paute River valley leads to the Santiago river. In this area the 16th century town of Logroño was located which became a fabulous "lost city" in the 18th century, popularly believed to have rich gold deposits, the location of which was supposedly known to the local Indians. This valley also led to Macas, which occasionally served as a provincial capital in colonial times.

-- Only a short distance separated the town of Loja from the Zamora River, which, flowing from south to north, joins the Paute to form the Santiago. The town of Zamora is the present-day capital of the province Zamora-Chinchipe, which includes the disputed Santiago-Zamora sector of the boundary. It was from Loja that the expedition set forth which founded Borja on the Marañón and established the province of Mainas.

The locations of towns on rivers is, of course, of significance from the viewpoint of communications only to the extent that the rivers are navigable, at least by the light river craft used on the upper Amazon. Of special interest is the mighty Marañón itself. Between the rivers Huancabamba and Santiago, as the Marañón emerges from the eastern palisades of the Andes, there is a series of narrow canyons and rapids which the natives call "pongos". The most easterly, the Pongo de Manseriche, constitutes the gateway to the Amazon system. We are told that many explorers have attempted to pass the Pongo de Manseriche in canoes and small steamers and that, even if a few have succeeded, it was only by rashly risking their lives. 1)

1. Oscar E. Reyes and Francisco Terán, Historia y geografía del Oriente ecuatoriana. Quito, 1939. pp. 65-66.

The possibilities of navigation vary greatly between the wet and dry - or rather, the flood and low water stages. There is really no "dry" season in this extremely humid area where rainfall of up to six meters (6,000 m.m.) per annum has been measured, but when the rivers receive the off-flow of melting snow from the mountains, they become much deeper and, for the same reason, more swift and dangerous. At low water, steamers can ascend the Marañón only to the mouth of the Morona, but at high water they can reach the site of Borja, the old capital of Mainas, just before the Pongo de Manseriche. 1)

In July 1957 Peruvian officials informed officers of Embassy Lima that vessels of 2 1/2-foot draft could reach Borja at all times but that four foot draft vessels could do so at low water only with difficulty. The same source indicated that the Santiago was navigable by 2 1/2-foot draft vessels all the year as far as the mouth of the Yaupi; however, four-foot draft vessels could ascend as far as the mouth of the Chinganaza only at high water. It will be recalled, however, that the Pongo de Manseriche lies just downstream on the Marañón from the mouth of the Santiago, so that a means of transport around the rapids would have to be developed if this route were to achieve commercial significance. In contrast, the Napo River is said to be navigable for vessels of 2 1/2-foot draft as far as the mouth of the Coca at all times and by four-foot draft vessels as far as the mouth of the Curaray on the Peruvian side of the protocol line. 2)

Peruvians have traditionally approached the Amazon basin from a different angle. Proceeding across the mountains from Lima to Huánuco and then to Pucallpa, they could utilize the Rio Ucayalí, which united with the Marañón just before the site of Iquitos, long the center of Peruvian exploration and penetration into the upper Amazon basin. With plenty of navigable river at their disposal, it was easier to move up the river towards the Andes than for the Ecuadoreans to move down the shallow, rocky streams which drained the melt from the Andean snows.

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1. Reyes and Terán, Historia y geografía... pp. 67-68.
 2. Emb. Lima tel. 7-9-57.

Peruvian settlement in the upper Amazon was greatly facilitated by the conclusion of a boundary treaty with Brazil on October 23, 1851. This agreement established the Apaporis-Tabatinga line as the boundary, the effect of which was to close the gap between Peru and Colombia and to seal Ecuador off from direct contact with Brazil. Peru quickly followed up this achievement by issuing a decree (1853) establishing the government of Loreto, embracing the territory included in the Cedula of 1802 and formerly known as Mainas. Both civil and military authorities were set up at Iquitos, which thereafter became the center for the gradual extension of Peruvian authority throughout the area.

Taking advantage of the freedom of navigation provided by the treaty, Peru sent two steamers up the Amazon in 1854; these were lost in 1856, but President Ramón Castilla purchased four more in England. These were named Morona, Pastaza, Napo and Putumayo - all rivers claimed wholly or in large part by Ecuador. The two first named were fitted as commercial vessels while the two latter were designed for research and exploration. 1) By such vigorous and practical measures Peru eventually came to possess most of the upper Amazon basin while in Ecuador the tomes demonstrating Ecuador's legal titles to the area were piling up.

It is probable that the search - eventually successful - for petroleum in the Ecuadorean Oriente has done more than the pious zeal of the missionaries to open up communications with the trans-Andean region. In 1937 the Ecuadorean government granted an 8,000,000 hectare concession to a subsidiary of the Shell Oil Co., and the company established its headquarters in Shell-Mera east of Ambato and west of the provincial capital of Puyo, so the latter town became connected by a road through the canyon of the Pastaza to Ambato and the highway network of Ecuador. Similarly, the discovery of oil at Lago Agrio led to the construction of a highway and a pipeline to the port of Esmeraldas. Further developments of this kind may be expected as the world shortage of petroleum impels exploration of increasingly difficult areas.

1. Basadre, Historia del Perú. 6th ed. vol IX, p. 235.

Somewhat anomalously, a further impulse for the development of communications in the Oriente came from Peru. Fernando Belaunde Terry, who became president in 1963, was determined to place the major emphasis of his administration on economic development, a field for which he felt his training as an architect particularly qualified him. One of his favorite projects was the Highway at the Edge of the Forest, usually known by its Spanish name, la Carretera Marginal de la Selva or simply as La Marginal. His road was planned to run from the Venezuelan border with Colombia, along the eastern slope of the Andes through Ecuador and Peru and to terminate at Santa Cruz de la Sierra in Bolivia. It would link areas of from 1500 to 5000 feet in altitude, thus avoiding both the inhospitable highlands and the muggy heat of the jungle. The total cost was estimated in 1966 to be \$494,000,000, of which \$81,300,000 was for the segment in Ecuador.

The Ecuadorean portion of La Marginal would pass through or near Tena and Macas and was calculated to open up for cultivation 1,640,000 hectares. It does not pass through any disputed sectors. The area, in 1966 supposed to have a population of 25,000, was thought capable at full development of supporting 412,000 of whom 270,000 would be farmers. 1) The estimates are taken from a feasibility study contracted by the Inter-American Development Bank (IDB) and may be regarded as optimistic to say the least.

Ecuador was slow in getting started on its sector: while in Peru 30 percent of the 1536 mile road had been completed by 1967, Ecuador did not begin serious construction work until 1974. Penetration roads from the Sierra have been constructed or improved, and, according to a 1976 road map of the Ministry of Public Works, segments of the Marginal Highway are in existence although the date of completion is not shown. The IDB is understood to have assisted in financing certain portions. The task of road maintenance in an area of exceptionally heavy rainfall will be onerous, especially since the

1. Hernán Horna, "South America's Marginal Highway" in the Journal of Developing Areas, Vol. 10, No. 4 (July, 1976) pp. 409-424.

plans do not call for hard surfaced roads in this area. However, although the optimistic estimates of the feasibility report may not be fully realized, experience in Brazil and Peru indicates that people will go where economic opportunity beckons: Pucallpa, Peru, where the central highway from Lima joins La Marginal, reportedly increased in population from 5000 inhabitants in 1961 to 40,000 five years later.

The development of small aircraft has possibly done more than anything else to open up the vast trans-Andean area. The map is now dotted with indications of landing strips, many far from any highway. While such means of rapid transport may make life in isolated hamlets and ranches more tolerable, heavier types of transport would be required if the area becomes economically developed. Oil companies have been forced to move heavy equipment by helicopter in many instances, adding greatly to the cost and to the risk. The problem of communications in this difficult terrain has yet to be solved; it seems likely that river transportation may still play an important part.

Ecuador's Rights as a Riverine State

Since rivers are and are likely to remain for some time an important part of the communications system in the upper Amazon basin, it is desirable to have a clear understanding of what rights Ecuador enjoys as a result of treaty obligations. Article VI of the Rio Protocol of 1942 reads in translation:

Ecuador shall enjoy for purposes of navigation on the Amazon and its Northern tributaries, the same concessions which Brazil and Colombia enjoy, in addition to those which may be agreed upon in a Treaty of Commerce and Navigation designed to facilitate free and untaxed navigation on the aforesaid rivers.

Before looking into the nature of the concessions enjoyed by Colombia and Brazil, there are a few points about the wording of the article which should be noted. First, the privileges extended to Ecuador are unilateral; Ecuador assumed no additional obligations under the Rio Protocol than those which might arise from other agreements in force. One previous obligation was assumed on November 26, 1853, when Ecuador, following a suggestion by the United

States, proclaimed that its portion of the Amazon and its tributaries would be open to navigation by ships of all nations. 1) This would apparently insure reasonable freedom to Peruvians should they choose to use it on the very limited stretches of navigable water remaining to Ecuador.

Second, the "concessions" referred to in Article VI are those which Peru has extended to Colombia and Brazil, not those which Colombia and Brazil may have extended to each other. For example, the Colombo-Brazilian treaty of November 15, 1928, provided in Article VI that war vessels of either country could navigate freely in the waters of rivers under the jurisdiction of the other party subject to the requirement that prior notice be given regarding the number and type of ships making use of this privilege. 2) This clause proved of great importance during the Leticia crisis when Colombia sent a naval squadron up the Amazon which drove the Peruvians out of Tarapacá, a small village on the Putumayo north of Leticia. Treaties between Peru and Brazil, so far as I have been able to ascertain, did not contain any specific provisions regarding the passage of war vessels although Article V of the treaty of September 8, 1909, provided that Peruvian vessels were to be able to communicate freely with the ocean via the Amazon. 3)

Article VI of the Rio Protocol reproduces concepts and almost the precise language which had been in use for nearly ninety years regarding navigation on the Amazon. The first such treaty was concluded between Brazil and Peru on October 23, 1851; besides establishing the boundary between them, the two parties agreed to give each other mutual rights of navigation on each others' rivers and not to extend any favors, privileges or immunities to any other nation. This attempt to monopolize commerce

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1. Villacrés Moscoso, Historia diplomática, Vol. II, p. 343.
 2. League of Nations Treaty Series, Vol. C, p. 126.
 3. Brazil, Ministerio das Relações Exteriores, O tratado de 8 de setembro de 1909 entre os Estados Unidos do Brasil e a Republica do Peru. Rio de Janeiro, 1910. pp. 44-45.

on the Amazon elicited an immediate protest from the US Chargé d'Affaires in Lima, J. Randolph Clay, who pointed out that this agreement violated the US-Peruvian treaty of January 26, 1851, which provided for most favored nation treatment with specific reference to fluvial navigation. Similar protests were quickly registered by Colombia, Ecuador and Venezuela. 1)

Possibly as a result of these objections, the treaty was renegotiated on October 22, 1858, to eliminate the monopolistic feature and to provide for free transit by land or river between Brazil and Peru, no taxes on individuals or their baggage and free movement of vessels subject only to the usual police and fiscal regulations. On September 7, 1867, the Emperor of Brazil proclaimed the free navigation of the Amazon by ships of all the nations of the world. Peru took similar action on December 17, 1869, and, as has been noted, Ecuador had already done so in 1853. 2)

The Brazilian-Peruvian treaty of September 8, 1909, stated (Article V) that a treaty of commerce and navigation should be concluded within 12 months based on the principle of the widest freedom of transit by land and fluvial navigation for both nations subject to fiscal and police regulations, which were to be as favorable to commerce and navigation as possible. Accioly's Collection of International Acts in Effect in Brazil (1937) does not indicate that the proposed treaty of commerce and navigation had been concluded up to that time. The status of this agreement between Brazil and Peru seems to be much like that between Peru and Ecuador under the Rio Protocol: a general principle - free navigation - has been enunciated, but the detailed regulations to put that principle into effect have not yet been negotiated.

With Colombia, however, the entire process has been completed and offers a good example of what a final arrangement between Ecuador and Peru might be like. The basic principle was enunciated in Article 8 of the Salomón-Lozano treaty of March 24, 1922, which established the

1. Villacrés Moscoso, Historia diplomática, Vol. II, pp. 335-337.

2. Villacrés Moscoso, Historia diplomática, Vol. II, pp. 343-344.

boundary between Colombia and Peru and created the Leticia trapezium. This article reads:

Colombia and Peru shall grant each other in perpetuity full freedom of transit by land and the right of navigation on their common rivers and the tributaries and confluences of those rivers, subject to the fiscal laws and regulations and those of the river police, without prejudice to their right to grant each other extensive customs privileges and whatever others may serve for the development of the interests of the two states. The fiscal and police regulations shall be as uniform in their provisions and as favorable to trade and navigation as possible. 1)

The complex negotiations required to settle the Leticia affair culminated in the signature by Colombia and Peru of a Protocol of Friendship and Cooperation at Rio de Janeiro on May 24, 1934. This agreement covered a number of subjects; the question of river navigation and related topics was taken up in Articles 4 and 6. Article 4 simply stated that, because of the common needs of the states in the basins of the Amazon and the Putumayo, they would conclude special agreements on customs, trade, free river navigation, etc. Article 6 provided for the creation of a commission composed of one representative each of Peru, Colombia and Brazil under the chairmanship of Brazil which should examine and report on any problem arising from the execution of these agreements. It would not have judicial or police powers, but if within 90 days after it had forwarded its report and recommendations to the two governments, they had failed to agree on the action to be taken, the dispute or problem should be settled by the commission. The signatories would in such case have 30 days in which to appeal the commission's decision to the Permanent Court of International Justice. 2)

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1. League of Nations Treaty Series, Vol. LXXIV, p. 12.
 2. League of Nations Treaty Series #3786, Vol. 164, p. 22 ff. The texts of the articles referred to are reproduced in appendix II.

On the same day as the protocol was signed, Colombia and Peru also concluded an "Additional Act" which was to be an integral part of the protocol and which constituted one of the special agreements referred to in Article 4. It is quite detailed and is reproduced in full in appendix II. In summary, it provided for "complete freedom of navigation and transit between the fluvial territories of Colombia and Peru in the basins of the Amazon and the Putumayo" and for equal treatment of nationals of both states in the territory of the other. Vessels should be exempt from dues except those levied by mutual agreement exclusively for the improvement of navigation on the common rivers, and goods in transit should not be examined by fiscal or police authorities. Police measures to prevent smuggling or protect public health should be applied equally to nationals of both countries and should not impede the freedom of transit or navigation.

Merchant vessels and warships of both would enjoy all rights and privileges granted by either country to any other state; since Colombia has granted freedom of passage for Brazilian war vessels on its rivers, Peru would under this clause presumably enjoy the same privilege. The question then arises whether Peru would be required to extend this right to Ecuador. While it seems most unlikely that Ecuador would wish to maintain a warship on the upper Napo, the Peruvians might be reluctant to extend transit privileges to Ecuadorean warships even in theory.

Further provisions of the Additional Act called for the creation of a special customs regime to facilitate frontier traffic; duty-free treatment of agricultural products and timber destined for export and exemption of goods in transit from all charges; a joint commission to work out details of customs exemptions and regulations was to be appointed. Finally, the agreement concluded with articles designed to protect the human rights of inhabitants of the area, particularly "forest dwellers who are not adapted, or not fully adapted, to civilization...." 1)

1. League of Nations Treaty Series, Vol. 164, p. 25 ff. Above direct quote is from Article 18.

There is nothing in the wording of Article VI of the Rio Protocol to indicate that Ecuador's right of free transit on the northern tributaries of the Marañón is to become effective only on the conclusion of a treaty of commerce and navigation. Rather, the implication is that the basic right of free navigation might be added to, defined, or extended by such an agreement. Yet there were many incidents during the period of tense relations during the 50's and 60's which cast doubts on the extent to which Ecuador would be allowed to exercise its rights. Of course, many of those incidents involved members of the armed forces, and it was generally agreed that military activities in the border areas should be undertaken only after prior notice and agreement. The committee of investigation which looked into the frontier incidents of 1952-53 reported, however, that, under existing Peruvian regulations, transit on the Curaray River was practically closed to Ecuador and said the conclusion of a treaty of commerce and navigation would be necessary if causes of friction were to disappear. 1)

Peru has repeatedly expressed its willingness to negotiate a treaty of commerce and navigation as soon as the boundary delimitation has been completed. To date this has not proved to be a sufficient inducement to Ecuador to surrender its hope of somehow acquiring an outlet on the Marañón. Should commerce in the upper reaches of the Amazonian tributaries ever reach significant proportions, the statesmen of the two countries might consider an agreement applicable only to those areas where the boundary has been agreed upon. Since this would include virtually all the navigable streams - the only important exception being the Santiago - substantial progress toward regularizing the frontier situation and encouraging the growth of commerce might in this way be achieved.

Ecuador's interest in the Amazon has by no means been limited to commerce and navigation; indeed, were this Ecuador's primary concern, it could in all probability have been satisfied under the provisions of the Rio Protocol. Besides insisting on establishing territorial sovereignty on the Marañón, Ecuador has desired greatly

1. Report of the Investigating Committee, 8-1-53, p. 50.

to receive international recognition as an Amazonian state. In the mid-19th century, the Peruvian government apparently had no objection to recognizing Ecuador in this capacity: in 1853 the Peruvian Foreign Minister, José Manuel Tirado, addressed a note to the Ecuadorean Charge in Lima, Francisco de Paula Icaza, inviting Ecuador to participate in a conference together with Brazil, New Granada and Venezuela to discuss the opening of the Amazon basin to commerce and navigation. 1)

It does not appear that this proposed conference ever took place, and in later years, as Peru's power and territorial aspirations expanded, the Peruvian Foreign Office began to raise objections to any recognition of Ecuador as an Amazonian state. This was presumably because the language of the Cedula of 1802 attached to Peru not only the Government of Mainas but also that of Quijos. Had Peru been able to establish its control over this area, it would have cut Ecuador off completely from navigable portions of the Amazonian tributaries; conversely, recognizing Ecuador as an Amazonian state would have derogated from Peru's claims to the eastern Andean foothills. Thus, in 1933, we find the Ecuadorean Foreign Ministry publishing a document asserting Ecuador's rights to be an Amazonian state based on the explorations of Pizarro and Orellana and the long years of service by Jesuit missionaries from Quito along the Marañón, the Napo and other rivers of the area.

A step toward recognizing Ecuador as an Amazonian state was achieved at the end of 1960 when the Ecuadorean-Brazilian Trade Commission signed an agreed minute providing reciprocal free port rights for the signatories at Manaos and the Ecuadorean port of San Lorenzo and recommending the construction of a highway linking the Ecuadorean Sierra with the head of navigation on the Putumayo River. The reason for the choice of these locations is not entirely clear: San Lorenzo is a small port, and the head of navigation on the Putumayo is much farther from the centers of Ecuadorean population than the Napo. In any case, it is the latter which is now connected by circuitous roads to the capital.

1. Villacrés Moscoso, Historia diplomática, Vol. II, pp. 348-349.

This technical agreement was solemnized by an exchange of letters in January 1961 between President Kubitschek of Brazil and President Velasco Ibarra of Ecuador. In his letter Kubitschek referred to "the Amazon basin which is common to both of us" and called Ecuador "an Amazonian country" - to the great pleasure of President Velasco.

Presumably the joy experienced in Lima was limited, for as recently as January 1967 relations between Ecuador and Peru were strained because of reports current in Quito that Peru was objecting to Ecuador's being invited to a conference of Amazonian states under Brazilian auspices. As those reports coincided with the approach of the anniversary of the signing of the Rio Protocol, public opinion became more than usually agitated, especially when the Peruvian Foreign Minister confirmed to the press on January 20 that Peru would not attend the meeting if Ecuador were invited.

Not until a decade later were Peruvian objections overcome. Then, as the result of a new initiative by the Brazilian Foreign Office, the Treaty of Amazonian Cooperation was signed on July 3, 1978, by the Foreign Ministers of Bolivia, Brazil, Colombia, Ecuador, Guayana, Peru, Surinam and Venezuela in Brasilia, one clause of which states that "nothing in this treaty can be regarded as having any bearing upon a border dispute or controversy." 1)

The treaty was more notable as a statement of intentions than as an operating document. The major provisions committed the signatories to endeavor to achieve:

- the greatest possible freedom of navigation;
- rational use of water resources;
- exchange of research, information and technicians to preserve plant and animal life;
- improvements of health conditions and the promotion of tourism;

1. Latin America, Political Report, Vol. XII, No. 26. 7-7-78.

- cooperation in scientific and technological study of the region; and
- the creation of adequate transportation and communications.

The first meeting of Foreign Ministers under the pact was not to take place until two years after it entered into effect and, despite its innocuous character, considerable delay was anticipated in the ratification process. Brazil's Foreign Minister Silveira stated optimistically that the treaty would be of greater importance in five, ten or twenty years than at the present time.

Nevertheless, the signature of this agreement represented the achievement of a long-held goal of Ecuadorean foreign policy: at last Ecuador had been publicly and officially recognized by everyone, including Peru, as an Amazonian state. The treaty held little prospect of concrete benefits for Ecuador: while some thought it might facilitate downstream shipment of Ecuadorean petroleum and other products, informed opinion questioned that the potential benefits of opening the rivers to commercial navigation would justify the great cost of dredging, straightening channels, etc. Thus, although the treaty contributed nothing directly towards the solution of the boundary problem, it did provide Ecuador with psychic satisfaction and laid to rest one source of friction between Ecuador and Peru.

In the long run, the only prospect of ever settling this centuries-long dispute lies in the gradual creation of friendly and cooperative relations between the neighboring countries, and while the end is nowhere in sight, a surprising amount of progress has been made in the past decade simply through downplaying the boundary issue. Perhaps this points the way of most fruitful endeavor for the future.

Resources and Development

Enough has been said in the foregoing pages regarding the difficulties of communication to indicate that the available information regarding the trans-Andean region is limited. As we are discussing primarily the disputed area, we should normally decide first what area is still disputed: is it the entire area between the Marañón and the Putumayo from the Andes to Brazil? Or is it

simply the relatively small stretches where the frontier markers have not yet been placed? In fact, neither of these extremes is realistic: the latter is too limited, the former too vast, since few individuals in Ecuador can today nourish any hope that the Pedemonte-Mosquera line will ever be recognized. Further, statistics are not readily available to break the areas down into discrete chunks; the Peruvian Department of Loreto includes a great deal of territory south of the Marañón as well as most of the region once claimed by Ecuador. Consequently, it will only be possible to give a general and superficial overview of the situation in this vast frontier zone.

The word "vast" is not misapplied in this case, either as to actual extent or as compared with the area of the rest of the two countries. The "Oriente" of Ecuador, now divided into four provinces, occupies 121,263 sq. kms. and represents 45.9 percent of the national territory. The forest (selva) region of Peru, both north and south of the Marañón, comprises nearly 63 percent of the land area of that country. In both cases the population is thin but growing: the Ecuadorean Oriente was estimated to have 46,471 inhabitants in 1950 representing 1.4 percent of Ecuador's total population; by 1968 this figure had reached 107,335 or 1.8% of the total. 1) Another source estimates the 1970 population to be 118,000.

The effect of road building, already mentioned in connection with the Peruvian town of Pucallpa, has also been apparent in Ecuador: in the '50's the town of Puyo was but a collection of a dozen huts, while in 1972, after it was connected with Ambato by road, it had become a sizeable town with shops and schools and formed the center of a new farming area. 2) Iquitos, the only "city" in the region, had an estimated population of 68,435 in 1967 and a projected population of 78,000 in 1972. 3) This growth is the more remarkable when it

1. John D. Martz, Ecuador: Conflicting Political Culture and the Quest for Progress. Boston, 1972. pp. 6-7.

2. Thomas E. Weil et al., Area Handbook for Ecuador, Washington, D.C., 1973. p. 52 and p. 308.

3. Thomas E. Weil, Area Handbook for Peru, Washington, D.C., 1972. p. 52.

is recalled that as recently as 1964 the inhabitants of Coca (Francisco de Orellana) at the confluence of the Coca and Napo rivers, sent a delegation to Quito to request protection against the Auca Indians who, they said, had killed six persons in the past seven months. 1)

Most of the population growth represents spontaneous migration from the heavily populated mountainous regions where there is inadequate arable land for the unchecked growth of the rural population. Both countries have made efforts to organize colonization of their vast hinterlands, generally with but limited success. Peru undertook an ambitious agrarian reform program after the revolution of 1968 but soon found that more than half the peasant families would still be landless when all the large estates had been broken up and distributed. Attention was then turned towards Amazonia, but it appears that the severity of the climate, the difficulties of transportation, the problems of adaptation and the cost are proving insurmountable obstacles to large scale success.

Ecuador initiated a program in 1972 under which settlers in the Oriente could receive title to 100 hectares (247 acres) after three years peaceful and uninterrupted occupation of the land. Norman Whitten Jr. in his book Sacha Runa 2) describes the visit of President General Rodríguez Lara to Puyo to launch this program and the apparent disregard for the interests of the native inhabitants. Conflicts between Indians and settlers still occasionally flare into violence although, according to Whitten, the Indians in the Canelos area have shown great adaptability in using legal and political means to protect their property and way of life.

A better organized plan for agricultural development is now underway in the valleys of the Zamora and Nangaritza Rivers in the Zamora-Chinchipe province of southeastern Ecuador. The Nangaritza flows near the base of the Cordillera del Cóndor which has played so important a part in the boundary dispute; however, the area involved is

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1. Embassy Quito airgram, 8-21-64.
 2. Urbana, Ill, 1976.

clearly within Ecuador under the terms of the Rio Protocol. In 1978 the IDB authorized a loan to Ecuador of \$16.9 million of the total estimated cost of \$30.9 million for this project. Surveys have indicated that the soil in these valleys is deep and fertile and lends itself to year-round grazing. 3240 families are already settled in the Zamora valley and 330 in the Nangaritza, mostly without formal titles; it is estimated that 1500 additional production units could be added in the Nangaritza area.

Plans for developing the project are quite comprehensive. Subprojects include arrangements for agricultural credit, forestry development, research and extension, local roads, marketing facilities, education and sanitation, among others. After many years of neglect, Ecuador is at last moving to occupy the great wilderness which remains to it after the collapse of its ambitions to possess the whole region between the Marañón and the Putumayo; perhaps Ecuador's present share of the Oriente is really as much as the country can reasonably expect to develop in the foreseeable future.

Another project which is currently under discussion is located in the southwestern corner of Ecuador, not far from the site of the 1941 invasion. This is a joint project with Peru which involves building two dams on the Puyango-Tumbes River which would irrigate 50,000 hectares in Ecuador and 20,000 in Peru. The Puyango rises in Ecuador, at one point forms the boundary between Peru and Ecuador, and then flows through Peru into the Pacific as the Tumbes.

Besides bringing concrete benefits to the impoverished frontier region, it was hoped this joint effort might help to overcome the animosity which had for so long typified Ecuadorean-Peruvian relations in this area. However, despite the fact that Ecuador's share of the benefit was more than twice the Peruvian, wrangling developed over compensation to Ecuador for some 7000 hectares of Ecuadorean land which would be flooded by the dams, and at last report the project was not progressing.

In addition to agriculture and cattle raising, Ecuador's Oriente offers many opportunities for the development of hydro-electric power. To date the need has not been sufficient to justify the cost, but at a later stage of development this resource could become a valuable asset. However, at the present moment, petroleum occupies

the center of attention in any consideration of natural resources.

In the days of the conquistadores rumors of gold and cinnamon led explorers into the Amazonian jungles; in the 20th century it is the black gold - petroleum - which spurs on modern pioneers to live and work in this inhospitable region. As in the past, legend as well as fact has played an important role in the search. Back in 1937 Ecuador's Supreme Chief of the Republic, Federico Páez, granted a concession to the Anglo-Saxon Oil Co., a subsidiary of the Shell group, to explore for oil in 8,000,000 hectares of the Oriente; the same company had previously developed a small oil field in the Santa Elena peninsula in southwest Ecuador, but production was not adequate even for domestic consumption.

Commercial quantities of petroleum were not found in the Oriente, but Villacrés Moscoso states that he had learned "confidentially" that oil was discovered and that this aroused the jealousy of the Standard Oil Co. which was collaborating with the government of Peru. In consequence "Standard Oil" urged the Peruvians to seize as much Ecuadorean territory as possible. Villacrés argues that since Sumner Welles (whom Villacrés consistently refers to as "Summer" Welles) naturally wished to defend the interests of the American company, he favored Peru in the mediation of 1941-42. 1) There is no factual evidence to support these allegations and no reason to credit these or similar charges by other publicists. 2) Actually, after World War II, Standard of New Jersey and Shell joined in an exploration program in the Canelos area which likewise failed to bring in commercial quantities of oil.

Ecuador kept a jealous eye on Peruvian-backed activities in the Oriente, at least in the portion near the disputed zone. In May 1954 the Ecuadorean Foreign Office protested against Peru's granting a concession to a Canadian oil company in the Santiago-Zamora area; according

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1. Historia diplomática, Vol. IV, pp. 473-474.
 2. See Wood, Aggression and History, pp. 220-223 for a more extended discussion of this point.

to the Ecuadorean note the grant included the region of the Rio Cenepa not far from the Cordillera del Condor where the boundary had not been delineated. Recent maps (1977) do not show any Peruvian concessions west of the Santiago.

The current phase of exploration and exploitation began for Ecuador with the granting of a concession to a Gulf-Texaco consortium in 1964. This concession originally included 3.6 million acres in the Napo region; in 1969 it was reduced to 1.2 million acres. In March 1967 the Gulf-Texaco group brought in their first well at Lago Agrio in northeastern Ecuador not far from the Colombian border, and two further successful wells were brought in shortly thereafter. The consortium would have preferred to connect their new wells with an existing pipeline in Colombia, only a few miles away, but the Ecuadorean government insisted that Ecuadorean petroleum be exported through an Ecuadorean port; consequently a 300 mile pipeline was built to the port of Esmeraldas. This pipeline has a capacity of 250,000 bbls. per day (bpd.) and the government petroleum corporation, CEPE, has constructed a refinery at Esmeraldas with a capacity of 55,000 bpd. which it plans to expand to 130,000 bpd.

Meanwhile, production in the Oriente has risen to approximately 200,000 bpd. and Texaco has agreed to spend \$30 million more on the development of new fields with a view to increasing production to 350,000 bpd. The prospects for further development are mixed. On one hand, the Ecuadorean fields are part of the Marañón-Pastaza basin which extends from southern Colombia through Ecuador and into Peru, suggesting considerable extent. On the other hand, wells drilled in Ecuador south of the Lago Agrio area have resulted in finds of oil too heavy for current commercial exploitation. Hence the amount of commercially attractive oil in Ecuador remains unknown, but limitations of significance are suggested.

The political problems surrounding the production of petroleum are beyond the scope of this paper. As so often happens, relations between the government and the foreign oil companies have been marked by frictions which unquestionably have hindered production. The government corporation, CEPE, was originally a minority partner in the Texas-Gulf consortium, but as a result of the frictions referred to above, the Gulf Corporation has withdrawn from Ecuador leaving Texaco as the junior partner

of CEPE. While CEPE wants the lion's share of the profits, it has little money to invest in costly exploration and wildcat drilling, creating an economic imbalance between the associates. Ecuador has become a member of OPEC and adjusts prices more or less in line with the major petroleum exporters. If economic considerations alone were to prevail, Ecuador might expect steadily increasing returns from trans-Andean oil based on increased production as well as rising prices. A new administration is to be inaugurated in 1979; the policies it will adopt are awaited with interest. 1)

Petroleum in Peru's segment of the Oriente has had its ups and downs too, with alternating optimism and despair. In 1968 the military government which seized power from President Fernando Belaunde Terry expropriated the holdings of the International Petroleum Corporation, an affiliate of Standard of New Jersey (now EXXON), and a considerable period intervened before prospecting by private companies could be resumed. The old Talara oil fields along Peru's northern coast were increasingly unable to meet even Peru's domestic requirements, so in 1970 the government corporation for petroleum affairs, Petroperú, announced its intention to concentrate efforts in the upper Amazon basin south of the Ecuadorean boundary.

Arrangements were worked out by several foreign companies with Petroperú on a contract basis to explore the vast Amazonian hinterland, and Occidental Petroleum discovered a good field in the Pastaza-Marañón basin adjacent to the Ecuadorean frontier. Hopes soared, and the Peruvian government obligated its anticipated oil revenues for several years in advance through the purchase of military equipment. After hubris came nemesis. One after another the other oil companies either drilled dry holes or forfeited their compliance bonds and withdrew. While Petroperú made some discoveries in areas it had reserved for itself, production remained far below what had been anticipated, and Peru found itself in an increasingly precarious financial position. For a time Peru

1. Martz, Ecuador, pp. 175-178; Weil, Handbook for Ecuador, pp. 286-287; interviews with staff members of the Office of Fuels and Energy.

was actually importing some 40,000 bpd. from Ecuador and Venezuela to make up for the shortfall in its own production.

Then the situation turned for the better. Occidental had the unusual good fortune of bringing in producing wells in 35 of 40 drilled and currently produces approximately 100,000 bpd. with reserves estimated at 180 million barrels of high quality crude. Since Peru's total production has now reached 150,000 bpd. and domestic consumption is only 120,000, about 30,000 bpd. are available for export. Production may reach 180,000 bpd. in late 1979 or in 1980. 1)

It is impossible to tell what the petroleum resources of the Ecuadorean-Peruvian Amazon basin may prove to be; this depends not only on volume but also on the state of technology and the condition of the market. At present it does not appear to be another Alaska North Slope much less another Saudi Arabia, but it does provide, retroactively, some justification for the great energies expended by both sides in defending their titles to an area which long seemed of greater interest to international lawyers in Lima and Quito than to entrepreneurs and settlers. Both countries need the capital which the oil may bring in; if it is wisely used, it could assist greatly in the economic and social development of both countries, especially of Amazonia itself, preparing the way for settlers who might eventually convert the region into a renewable resource which will still yield returns when the petroleum deposits are exhausted. In this sense, the dream of El Dorado lives on.

1. Weil, Handbook for Peru, p. 287; International Petroleum Encyclopedia, 1978. Article on Peru. Tulsa, Okla., 1978; interview with staff members of the Office of Fuels and Energy.

Chapter XII

THE DISPUTE IN PERSPECTIVE

Justice or Equity?

The United States government has always maintained an attitude of impartiality between the two sides of the Ecuador-Peru boundary dispute, and inevitably so, since it has always been the US objective to maintain good relations with both. Nevertheless, many individuals have felt sympathy for Ecuador. Ecuador has had all the appeal of the underdog, the brave little country attempting to uphold rights against a larger, aggressive neighbor. And when in 1941 that larger neighbor brushed aside the pitiful resistance Ecuador could offer and invaded and occupied a large piece of undeniably Ecuadorean territory, indignation was widespread. Secretary Hull told the Peruvian Ambassador on September 22, 1941, that Peru was displaying an attitude "contrary to every line and syllable of the Lima Declaration on conquest by force, and a disposition to do what Hitler is doing...." 1) That was strong language in the days before vituperation became the standard currency of diplomatic exchange, and it doubtless reflected the sentiments of most of the American people.

Given the circumstances in 1941-42, the United States had no alternative but to press for the conclusion of an agreement to terminate the occupation and restore at least a semblance of normal relations between the neighboring countries. There is every indication, such as Welles' insistence on retaining the protocol article on free navigation, that the settlement was made as favorable to Ecuador as possible considering the fact that neither the United States alone nor the inter-American system were in a position to put real pressure on Peru.

Whatever the merits of Ecuador's legal case, it would have been bolstered had Ecuadoreans been more successful in occupying their vast hinterland. It was here that Ecuador's lack of resources and its domestic political

1. Wood, Aggression and History, p. 135.

upheavals, plus the difficulties of communication, gave Peru the great advantage. Year after year, beginning in the 1850's, Peruvian launches explored the various tributaries of the Marañón and, despite frequent Ecuadorean protests, pushed their military posts and trading centers and missions up the rivers until, in 1936, Ecuador found itself confined behind a status quo line which cut it off from the Marañón, nor could it effectively protest since in fact Ecuador had no settlements within many miles of that river. It was the failure to colonize and to possess what was largely an uninhabited territory that gravely weakened Ecuador's claim to a large part of the upper Amazon basin.

In the light of these considerations, then, the territorial division effectuated by the Rio Protocol took away from Ecuador little that it had ever actually occupied, the most notable exceptions being the towns of Andoas and Rocafuerte. Perhaps no American was closer to the actual implementation of the Rio Protocol than Dr. George M. McBride, technical advisor to the Joint Boundary Commission which was created shortly after the ratification of the protocol in 1942. In his final report, dated in 1949, Dr. McBride gave his opinion on the settlement. Referring to the boundary in the western sector (not now in dispute) McBride said it represented recognition of the dividing line between the two peoples which had existed since colonial times and which had become more firmly established since independence. What the Rio Protocol did in this sector was to clear up a few doubtful geographic definitions and to fix a definite line within the narrow zone already recognized.

As regards the boundary in the east, Dr. McBride continued, much the same situation prevailed although it was much less recognized. Here, too, there existed a traditional zone which the 1942 line followed rather closely. The Rio Protocol line, according to McBride, was based largely on the 1936 status quo agreement which, although neither country committed itself to accept it as the final boundary, did represent a de facto division between them at a time when there was no military occupation or coercion. Both countries, McBride went on, had long been advancing towards this vague line and both continued to do so; in only a few instances had frontier

garrisons or settlements gone beyond it. The 1936 line was approximately that proposed by Requena in 1779 and embodied in the Royal Cedula of 1802. 1)

Dr. McBride agreed in general with Julio Tobar Donoso in considering that the Rio settlement balanced quality against size; it gave Peru more, but Ecuador better, lands, and it recognized that Peru had advanced further into the area than Ecuador. McBride concluded:

...It is the best boundary that could have been found. Any line that differed substantially from it would have been much less satisfactory and probably could not have stood the test of time as a suitable international boundary.... Some improvement may be made in minor details, and should be made, in order to remove defects existing at certain points in the present line. But to attempt a general revision of the Protocol boundary would open up the entire long-standing controversy without any hope of finding a line which would solve the problem as well as that now established. From this viewpoint the Protocol boundary should be considered final. 2)

...Now that most of the new boundary is fully established and permanently demarcated, every effort should be made to avoid any reopening of the question. Rather, all efforts should be made to push the settlement to a final conclusion, for the benefit of the two countries most intimately concerned and for the peace of the continent as a whole. 3)

To Dr. McBride's points Miss Whiteman added a few of her own: she commented that few boundary settlements had affected so few inhabitants or their properties; while Peru had received most of the navigable waters, the land was mostly low and swampy and subject to annual

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1. McBride, Final Report, Chapter V, pp. 5-7.
 2. McBride, Final Report, Chap. V, pp. 38-39.
 3. McBride, Final Report, Chap. VII, pp. 15-16. The Final Report forms an attachment to Marjorie Whiteman's Memorandum of March 18, 1953.

innundation, while the Ecuadorean land was higher, well drained and offered better prospects for oil and gold bearing gravels. 1)

Whatever the merits or defects of the boundary settlement incorporated in the Rio Protocol, it was initially accepted by Ecuador with great reluctance, and opposition to it was noisily manifest from the first. Nevertheless, the treaty was ratified, and steps were taken to carry out the actual demarcation of the boundary. The discovery of geographical features unknown to the drafters of the protocol in the Santiago-Zamora and Lagartococha sectors provided the rationale for an Ecuadorean demand that the protocol be revised since it was inexecutable. Although private individuals had long insisted on rejecting the settlement, the first official statement endorsing revision was issued by President Galo Plaza on August 10, 1951, and the idea soon spread to become a national movement. Plaza hinted at the nullification of the agreement by saying that Ecuador would not accept any solution which did not recognize Ecuador as an Amazonian state and give it a sovereign outlet on the Marañón. The Peruvian officials quickly understood that Ecuador was unwilling to agree to any settlement of the geographical anomalies within the scope of the Rio Protocol but intended to push for its substantial revision.

Consequent to this conclusion, Peru set its face like granite against the alteration of the protocol, even to the point of appearing to deny the existence of any geographic anomalies which prevented the literal execution of the protocol's provisions. While this position becomes comprehensible when the terms of the Braz Dias de Aguiar award of 1945 are taken into consideration, it has often left the impression of a stubborn refusal to admit plain facts. With the work of delineation halted because of these disagreements, the dynamics of politics propelled Ecuadorean elected officials into more and more extreme positions until in 1960 José María Velasco Ibarra openly proclaimed the nullity of the Rio Protocol.

1. Whiteman, Memorandum, p. 65.

In these circumstances several ideas were advanced for procedures to overcome the difficulties and, at least to some extent, to satisfy Ecuador's Amazonian aspirations.

Proposals for Settlement

Attention naturally centered on the Santiago-Zamora sector, where Ecuador approached most closely to the Marañón. At first it was thought that further surveys were required to clarify the geographic realities, after which the parties might resort either to mediation or, in the last resort, to binding arbitration. This proposal failed since the US Air Force photographs of the area clearly demonstrated the absence of a single watershed between the Zamora and the Santiago, so that on this point at least no further surveys were necessary. Ecuador warmly supported the proposal for additional surveys since these could scarcely fail to demonstrate the impossibility of carrying out the literal wording of the protocol, but Ecuador was far less enthusiastic about arbitration, which might be expected to propose a line between the rivers consistent with the clear intent of the protocol barring Ecuador from the Marañón. Peru rejected the entire package, pointing out that the matter had already been subject to an arbitral decision and that all that was needed was to carry it out.

A Brazilian proposal for dividing the disputed area by using the river Cenepa as the compromise boundary got little support from either party. Ecuador is determined to settle for nothing less than sovereign access to the Marañón, although it now seems likely that a purely symbolic "access" would suffice to satisfy the national honor. Modern Ecuadorean maps give more than a hint of the objective sought: these maps show the demarcation of the boundary in the south-west to end at the source of the Quebrada de San Francisco; from there they would like to run a line roughly due east to the Marañón, a distance of about 62 kms., then follow that river to the mouth of the Santiago, hence north to join the marked boundary at the junction of the Santiago and the Yaupi. As a fall back position, a line has been proposed running east from the marker "Trinidad" (see map following p. 133) to reach the Marañón at a point further east, near the mouth of the Santiago. The distance from the mouth of the Santiago to the nearest point now demarcated is estimated at about 104 kms. It should be noted that acquisition of the juncture of the Santiago with the Marañón

would be of virtually no communications advantage to Ecuador since the Pongo de Manseriche blocks navigation on the Marañón downstream from the mouth of the Santiago.

To overcome the obstacle posed by the Pongo de Manseriche, it has been suggested that a road might be constructed around the rapids and Ecuador given a site for a port which could either be an enclave under Ecuadorean sovereignty or a free port under nominal Peruvian sovereignty but where Ecuadorean officials would control commercial activities. This compromise proposal has not been accepted by either party. Ecuador insists on sovereign access to the Marañón; Peru insists that the protocol and the Aguiar award be carried out.

Given the wild and uninhabited nature of the country it might be thought that Peru could easily make the sacrifice of allowing Ecuador a corridor to the Marañón in return for the security of its northern frontier, but such has not been the case. Years ago the Peruvian military decided that Peru's security demanded the exclusion of Ecuador from sovereign access to any part of the Marañón, and there is no indication that that position has changed. On the contrary, President Morales Bermúdez has repeatedly said that Peru would never surrender a centimeter of the national territory. This sensitivity to territorial integrity, arising from the trauma of the War of the Pacific, is so acute that Peru has refused to consent to Chile's giving Bolivia a corridor to the sea through formerly Peruvian territory which has been under Chilean control for nearly 100 years and which Peru has recognized as part of Chile since 1929. Add to this the fact that the region is reputed to be "full of oil" and that the northern spur of the Peruvian Trans-Andean pipeline crosses the Marañón just east of the Santiago, and it will be apparent that there is little likelihood that Peru's negative attitude will change in the foreseeable future.

It is also unlikely that Ecuador will formally surrender its claim to access to the Marañón in return for improved but non-sovereign access to the Amazon River's other tributaries. As early as July 1954 Robert F. Woodward, then Deputy Assistant Secretary of State for Inter-American Affairs, suggested that the United States might assist Ecuador to construct a highway from Quito to the Rio Napo, which was navigable, at least by small vessels, from within Ecuadorean territory all the way to the Amazon

east of Iquitos. Such a highway now exists, and Ecuador could enjoy extensive rights of commerce and navigation if it were willing to conclude the demarcation of the boundary on terms acceptable to Peru. However, there is no indication that the trade which might be generated from the upper Napo would be of sufficient consequence at this time to constitute a real inducement to Ecuador, to surrender its dream of sovereign access to the Marañón. This dream is not stimulated by prospects of commercial or economic gain; it represents a national political aspiration, the need to make real Ecuador's self image of what it is.

Ecuador has made numerous efforts to bring its case before the Organization of American States, but, as has been noted above, these attempts have foundered on the vested interest of almost every American country except Bolivia in upholding the sanctity of territorial settlements made in the past, many of them under the threat or with the use of coercion. The United Nations has provided an annual forum for airing the boundary problem but offers little hope for concrete achievement. Complicated procedures for getting the question before the International Court of Justice have been considered from time to time but have always encountered adamant Peruvian resistance on the ground that the Rio Protocol taken together with the decisions rendered on it by Dias de Aguiar provide all the basis required to complete the demarcation.

Meanwhile, as we have seen, the intensity of Ecuadorian popular interest in the boundary question has diminished. The discovery of oil in Ecuador's portion of the Oriente has gradually made revision of the Rio Protocol less urgent, and cooperation with Peru in the Andean Pact and in defense of the 200 mile sea frontier has blunted the sharp edge of Ecuadorean rancor although it seems that every January some incident occurs which revives the old fears. Although the dispute is not now acute, as long as it remains unsettled, there is always a possibility that it may flare up again and disturb the peace of the hemisphere. Should that occur, the United States may again become involved in its role as a guarantor of the Rio Protocol.

The Role of the United States

The role of the United States in the Ecuador-Peru dispute has been cautious rather than brilliant, plodding rather than inspired. Yet even with hindsight it is difficult to see how it could have been otherwise. Perhaps a slightly less legalistic approach during the Washington talks of 1936-38 might have produced better results, but this seems unlikely since all indications are that Peru had already determined to settle the controversy only on terms unacceptable to Ecuador. The 1938 Inter-American Conference at Lima had decided upon a procedure for handling threats to the peace - a meeting of Foreign Ministers which might be called at the initiative of any one of them - and it was obvious that Peru was fearful of being brought before a tribunal of its peers over the Ecuadorean problem. However, until war broke out in September 1939 the device had not been used and was at the time regarded primarily as a means of protection against extra-hemispheric aggression. It is not clear that a meeting of Foreign Ministers could have been more effective than the tripartite mediation. And of course the statesmen in Washington were determined above all to maintain hemispheric solidarity in the face of serious threats of war in the summer of the 1941 and the actuality after December 7. Whether by calculation or chance, Peru timed its invasion perfectly.

The obligations undertaken by the United States and the ABC countries as guarantors of the Rio Protocol have already been described, but to review them briefly: in Article V the United States and Argentina, Brazil and Chile guaranteed the execution of the protocol until the definitive demarcation of the boundary should have been completed; Article VII provides that any doubts and disagreements should be settled by the parties with the assistance of representatives of the guarantors, and Article XI states that any rectifications in the boundary to adjust to geographical realities should be made with the collaboration of the guarantors' representatives. 1) Thus the guarantors' obligations have not ceased since the demarcation of the boundary is not yet

1. Spanish and English texts of the Rio Protocol are reproduced in Appendix I.

completed, and they are still to assist the parties in ironing out their disagreements.

On at least two occasions the staff of the Department's Legal Adviser has considered in some detail the nature of the obligations assumed by the United States and its fellow guarantors. In her memorandum of March 18, 1953, Miss Marjorie Whiteman pointed out that the guarantors' powers were loosely defined: "mediation" was not mentioned although the work of the guarantors often resembled mediation more than anything else; such words as "cooperation", "guaranty", "assistance" and "collaboration" were so general as to permit almost any kind of action looking toward the execution of the protocol; such permissive action might include diplomatic negotiation, good offices, mediation, conciliation, arbitration, or preventive action to avoid a violation of the protocol. Miss Whiteman concluded that it would be unsound to take a position that at any given time or in connection with any controversy the guarantors were required to take any specific type of action: "Numerous types of activity on the part of the Guarantors may be authorized or permitted by the Protocol; no one type of activity is necessarily required by it. The duty of a guarantor depends upon many circumstances." 1)

The response of Legal Adviser Leonard Meeker to an inquiry from Secretary Rusk in 1965 was substantially in accord with the earlier opinion. He pointed out that the protocol did not define "guaranty" as it appears in Article V and stated that a proper interpretation would not lay on the guarantors an obligation to defend - as by military force - the boundary set forth in the protocol, and he noted that, although the protocol had been signed by the United States and the other guarantors, it had not been submitted to the Senate for advice and consent, which would have been normal procedure in the case of an international agreement laying obligations of real guaranty on the United States. In view of the background language and over-all design of the protocol, he concluded, it seemed reasonable to interpret the obligations of the guarantors as covering functions in the field of good offices and friendly assistance. 2)

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1. Whiteman, Memorandum, 3-18-53, pp. 68-69.
 2. Memorandum, Meeker to the Secretary, 4-21-65.

No formal rules of procedure were ever drawn up for the activities of the guarantors, but in the course of time their modus operandi came to be quite well established. While consultations were held occasionally among their representatives in the various capitals, the formal meetings were all held in Rio de Janeiro under the chairmanship of the Brazilian Foreign Minister. The ambassadors of the other guarantors participated personally unless they were out of town, and at first there was some reluctance even to admit Chargés. The rule of unanimity was strictly applied, and when full agreement could not be reached, the decision was deferred pending further efforts to achieve concurrence. The result was that the decision-making process was painfully slow, comparing unfavorably with the rapid decisions of the OAS Council when acting as Organ of Consultation under the Rio Treaty of 1947.

Besides the slowness resulting from the need to consult the Foreign Offices on every proposed move and even on details of wording, the action of the guarantors was inhibited by their reluctance to incur the wrath of either of the disputants. Their efforts were concentrated on finding solutions acceptable to both sides, and since the parties were rarely able to agree on any substantive move, this usually meant that nothing was done.

The one procedure on which the guarantors and the parties were frequently in agreement was the dispatch of neutral observers, usually military attachés, to the frontiers in times of stress. These military commissions were on several occasions able to deflate exaggerated rumors and calm down potentially threatening situations. Only when the Ecuadorean President and Foreign Minister repeatedly and publicly declared the Rio Protocol "null" were the guarantors forced to take a stand, and the riots in Quito which followed their December 7, 1960, affirmation of the protocol's continuing validity did nothing to encourage the guarantors to take strong stands in the future.

It would be unfair to blame the other guarantors exclusively for the relative ineffectiveness of the system. The United States has been no more - and in many instances less - willing to take decisive action than the others. This arose naturally from the fact that our interests in both Peru and Ecuador are considerably larger and more vulnerable than those of the other guarantors. The United States fought a long delaying action against

the declaration of December 7, 1960, and later incurred the ire of the Peruvians by its refusal to go along with further statements the others were prepared to make on the binding character of international agreements. On the other hand, the United States did make many efforts, particularly in the 1950's, to find solutions to the problems of executing the terms of the protocol; in this connection the efforts of Ambassador Maurice M. Bernbaum were especially noteworthy.

In any consideration of future actions of the United States in connection with the boundary dispute the role of the guarantors must be considered. Experience to date would seem to indicate that the guarantors are an ineffective instrument. On the other hand, they do have legal status, consecrated by the Rio Protocol, which gives them both the right and the duty to play a part in the settlement of disagreements, should this prove necessary.

The protocol makes no provisions for the guarantors to act separately; rather it is presumed that they will act as a group, and much of their potential for moral suasion stems from the impact of a joint proposal. Further, in the past, the individual guarantors have been sensitive to any suspicion that one was acting without prior consultation with the others. This is particularly true of Argentina and Brazil: in the case of the former insistence on joint action may be attributed to national sensitivity; Brazil, however, since the days of Oswaldo Aranha, has taken the lead in matters pertaining to the Ecuador-Peru boundary and undoubtedly would expect to be consulted about any move in the future. This expectation is justified by Brazil's position as the leading Amazonian power and the sponsor of the recent treaty on Amazonian Cooperation.

The guarantors' current lack of initiative may not, however, be detrimental: whenever the guarantors are active each of the parties relies on them to induce the other to reach agreement; both, convinced of the righteousness of their positions, tend to sit back and wait for the guarantors to induce concurrence from the other. The guarantors have been and could conceivably again be useful in calming tense situations, but if a final solution is ever found, it is most likely to result from the interaction of the disputants themselves rather than from external pressure.

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The recent discussions between the parties have shown that they are still far apart. Ecuador at this point has little incentive to close the 78 km. gap in the frontier unless it can thereby gain sovereign access to the Marañón; Peru has little incentive to offer such a concession, and the military are opposed to yielding what they consider to have been Peruvian territory since the foundation of the Republic. Of course, should Peru and Chile become involved in conflict, this situation might change, but there seems to be little prospect of this at the present time.

Meanwhile, history seems to be repeating itself: as the status quo line of 1936 became the de facto boundary between the two countries, so the Cordillera del Cóndor, long supposed to be the watershed between the Zamora and the Santiago, is becoming recognized as the dividing line in fact, if not in theory. Ecuadorean troops generally stay on the west side, Peruvian on the east. Occasionally adventuresome or lost patrols meet and exchange unpleasanties, but the military chiefs on both sides have shown themselves sensible enough to defuse these petty clashes. There remains an element of danger while the gap in the demarcation exists, but for the present, the threat has receded.

If at some point in time the boundary dispute can be settled, then the way will be opened for a number of constructive plans for intensifying Ecuadorean activity in the upper Amazon basin: a treaty of commerce and navigation; the possibility of a free port in Peruvian territory on the Marañón; a road around the Pongo de Manseriche, and joint projects to dredge and mark channels on navigable rivers in or leading to Ecuadorean territory - all these and more can become fruitful subjects for discussion, preferably between the parties themselves, possibly with the assistance of the guarantors. The growing willingness of both parties to discuss their problems with each other is an encouraging indication that some progress, however slow, is yet possible.

APPENDIX I

THE RIO PROTOCOL

Executive Agreement Series 288

EXECUTIVE AGREEMENT SERIES 288

PEACE, FRIENDSHIP, AND BOUNDARIES
BETWEEN PERU AND ECUADOR

PROTOCOL
BETWEEN PERU AND ECUADOR

(SIGNED ALSO BY REPRESENTATIVES
OF THE UNITED STATES OF AMERICA,
ARGENTINA, BRAZIL, AND CHILE)

Signed at Rio de Janeiro, January 29, 1942.
Approved by the Congress of Ecuador February 26, 1942.
Approved by the Congress Of Peru February 26, 1942.

PROTOCOLO DE PAZ, AMISTAD Y LIMITES
ENTRE PERU Y ECUADOR

Los Gobiernos del Perú y del Ecuador, deseando dar solución a la cuestión de límites que por largo tiempo los separa, y teniendo en consideración el ofrecimiento que les hicieron los Gobiernos de los Estados Unidos de América, de la República Argentina, de los Estados Unidos del Brasil y de Chile, de sus servicios amistosos para procurar una pronta y honrosa solución del problema, y movidos por el espíritu americanista que prevalece en la III Reunión de Consulta de Ministros de Relaciones Exteriores de las Repúblicas Americanas, han resuelto celebrar un Protocolo de paz, amistad y límites en presencia de los Representantes de esos cuatro Gobiernos amigos. Para este fin intervienen los siguientes Plenipotenciarios:

Por la República del Perú, el Señor Doctor Alfredo Solf y Muro, Ministro de Relaciones Exteriores; y

Por la República del Ecuador, el Señor Doctor Julio Tobar Donoso, Ministro de Relaciones Exteriores;

Los cuales, después de exhibidos los plenos y respectivos poderes de las Partes, y habiéndolos encontrado en buena y debida forma, acordaron la suscripción del siguiente Protocolo:

ARTICULO PRIMERO

Los Gobiernos del Perú y del Ecuador afirman solemnemente su decidido propósito de mantener entre los dos pueblos relaciones de paz y amistad, de comprensión y de buena voluntad, y de abstenerse, el uno respecto del otro, de cualquier acto capaz de perturbar esas relaciones.

ARTICULO II

El Gobierno del Perú retirará, dentro del plazo de 15 días, a contar de esta fecha, sus fuerzas militares a la línea que se halla descrita en el Artículo VIII de este Protocolo.

ARTICULO III

Estados Unidos de América, Argentina, Brasil y Chile cooperarán, por medio de observadores militares, a fin de ajustar a las circunstancias la desocupación y el retiro de tropas en los términos del artículo anterior.

ARTICULO IV

Las fuerzas militares de los dos Países quedarán en sus nuevas posiciones hasta la demarcación definitiva de la línea fronteriza. Hasta entonces, el Ecuador tendrá solamente jurisdicción civil en las zonas que desocupará el Perú, que quedan en las mismas condiciones en que ha estado la zona desmilitarizada del Acta de Talara.

ARTICULO V

La gestión de Estados Unidos, Argentina, Brasil y Chile continuará hasta la demarcación definitiva de las fronteras entre el Perú y el Ecuador, quedando este Protocolo y su ejecución bajo la garantía de los cuatro países mencionados al comenzar este artículo.

ARTICULO VI

El Ecuador gozará, para la navegación en el Amazonas y sus afluentes septentrionales, de las mismas concesiones de que gozan el Brasil y Colombia, más aquellas que fueren convenidas en un Tratado de Comercio y Navegación destinado a facilitar la navegación libre y gratuita en los referidos ríos.

ARTICULO VII

Cualquier duda o desacuerdo que surgiere sobre la ejecución de este Protocolo, será resuelto por las Partes con el concurso de los Representantes de Estados Unidos, Argentina, Brasil y Chile, dentro del plazo más breve que sea posible.

ARTICULO VIII

La línea de frontera será referida a los siguientes puntos:

A)-En el Occidente:

- 1)-Boca de Capones en el Océano;
- 2)-Río Zarumilla y Quebrada Balsamal o Lajas;
- 3)-Río Puyango o Tumbes hasta la quebrada de Cazaderos;
- 4)-Cazaderos;
- 5)-Quebrada de Pilares y del Alamor hasta el río Chira;
- 6)-Río Chira, aguas arriba;
- 7)-Ríos Macará, Calvas y Espíndola, aguas arriba, hasta los orígenes de este último en el Nudo de Sabanillas;
- 8)-Del Nudo de Sabanillas hasta el río Canchis;
- 9)-Río Canchis en todo su curso, aguas abajo;
- 10)-Río Chinchipe, aguas abajo, hasta el punto en que recibe el río San Francisco;

B)-En el Oriente:

- 1)-De la Quebrada de San Francisco, el "divortium aquarum" entre el río Zamora y el río Santiago hasta la confluencia del río Santiago con el Yaupi;
- 2)-Una línea hasta la boca del Bobonaza en el Pastaza. Confluencia del río Conambo con el Pintoyacu en el río Tigre;
- 3)-Boca del Cononaco en el Curaray, aguas abajo hasta Bellavista;
- 4)-Una línea hasta la boca del Yasuní en el río Napo. Por el Napo, aguas abajo, hasta la boca del Aguarico;
- 5)-Por éste, aguas arriba, hasta la confluencia del río Lagartococha o Zancudo con el Aguarico;
- 6)-El río Lagartococha o Zancudo, aguas arriba, hasta sus orígenes y de allí una recta que vaya a encontrar el río Güepí y por éste hasta su desembocadura en el Putumayo y por el Putumayo arriba hasta los límites del Ecuador y Colombia.

ARTICULO IX

Queda entendido que la línea anteriormente descrita será aceptada por el Perú y el Ecuador para la fijación, por los técnicos, en el terreno, de la frontera entre los dos países. Las Partes podrán, sin embargo, al procesarse a su trazado sobre el terreno, otorgarse las concesiones recíprocas que consideren convenientes a fin de ajustar la referida línea a la realidad geográfica.

Dichas rectificaciones se efectuarán con la colaboración de representantes de los Estados Unidos de América, República Argentina, Brasil y Chile.

Los Gobiernos del Perú y del Ecuador someterán el presente Protocolo a sus respectivos Congresos, debiendo obtenerse la aprobación correspondiente en un plazo no mayor de 30 días.

En fe de lo cual, los Plenipotenciarios arriba mencionados afirman y sellan, en dos ejemplares, en castellano, en la ciudad de Río de Janeiro, a la una hora del día veintinueve de Enero del año mil novecientos cuarenta y dos, el presente Protocolo, bajo los auspicios de Su Excelencia el Señor Presidente del Brasil y en presencia de los Señores Ministros de Relaciones Exteriores de la República Argentina, Brasil y Chile y del Subsecretario de Estado de los Estados Unidos de América.

| | |
|--------|---------------------|
| (L.S.) | Alfredo Solf y Muro |
| (L.S.) | J. Tobar Donoso |
| a) | Sumner Welles |
| a) | E. Ruiz Guinazú |
| a) | Juan B. Rossetti |
| a) | Oswaldo Aranha |

É COPIA AUTÉNTICA
Secretaria de Estado das Relações Exteriores
Rio de Janeiro D.F., em 30 de Janeiro de 1942

José Roberto de Macedo Soares.
Chefe da Divisão de Atos, Congressos
e Conferências Internacionais

(N.B. Minor corrections in spelling, punctuation and capitalization have been made based on comparison with the Spanish text in Tobar Donoso, La Invasión Peruana y el Protocolo de Río.)

(Translation)

PROTOCOL OF PEACE, FRIENDSHIP, AND BOUNDARIES
BETWEEN PERU AND ECUADOR

The Governments of Peru and Ecuador, desiring to settle the boundary dispute which, over a long period of time, has separated them, and taking into consideration the offer which was made to them by the Governments of the United States of America, of the Argentine Republic, of the United States of Brazil, and of Chile, of their friendly services to seek a prompt and honorable solution to the problem, and moved by the American spirit which prevails in the Third Consultative Meeting of the Ministers of Foreign Affairs of the American Republics, have resolved to conclude a protocol of peace, friendship, and boundaries in the presence of the representatives of those four friendly Governments. To this end, the following plenipotentiaries take part:

For the Republic of Peru, Doctor Alfredo Sol y Muro, Minister of Foreign Affairs; and

For the Republic of Ecuador, Doctor Julio Tobar Donoso, Minister of Foreign Affairs;

Who, after having exhibited the respective full powers of the parties, and having found them in good and due form, agree to the signing of the following protocol:

ARTICLE ONE

The Governments of Peru and Ecuador solemnly affirm their resolute intention of maintaining between the two peoples relations of peace and friendship, of understanding and good faith and of abstaining, the one with respect to the other, from any action capable of disturbing such relations.

ARTICLE II

The Government of Peru shall, within a period of 15 days from this date, withdraw its military forces to the line described in article VIII of this protocol.

ARTICLE III

The United States of America, Argentina, Brazil, and Chile shall cooperate, by means of military observers, in order to adjust to circumstances this evacuation and retirement of troops, according to the terms of the preceding article.

ARTICLE IV

The military forces of the two countries shall remain in their new positions until the definitive demarcation of the frontier line. Until then, Ecuador shall have only civil jurisdiction in the zones evacuated by Peru, which remain in the same status as the demilitarized zone of the Talara Act.

ARTICLE V

The activity of the United States, Argentina, Brazil, and Chile shall continue until the definitive demarcation of frontiers between Peru and Ecuador has been completed, this protocol and the execution thereof being under the guaranty of the four countries mentioned at the beginning of this article.

ARTICLE VI

Ecuador shall enjoy, for purposes of navigation on the Amazon and its northern tributaries, the same concessions which Brazil and Colombia enjoy, in addition to those which may be agreed upon in a Treaty of Commerce and Navigation designed to facilitate free and untaxed navigation on the aforesaid rivers.

ARTICLE VII

Any doubt or disagreement which may arise in the execution of this protocol shall be settled by the parties concerned, with the assistance of the representatives of the United States, Argentina, Brazil, and Chile, in the shortest possible time.

ARTICLE VIII

The boundary line shall follow the points named below:

A)-In the west:

- 1)-The mouth of the Capones in the ocean;
- 2)-The Zarumilla River and the Balsamal or Lajas Quebrada;
- 3)-The Puyango or Tumbes River to the Quebrada de Cazaderos;
- 4)-CazaCeros;
- 5)-The Quebrada de Pilares y del Alamor to the Chira River;
- 6)-The Chira River, upstream;
- 7)-The Macará, Calvas, and Espíndola Rivers, upstream, to the sources of the last mentioned in the Nudo de Sabanillas;
- 8)-From the Nudo de Sabanillas to the Canchis River;
- 9)-Along the whole course of the Canchis River, downstream;
- 10)-The Chinchipe River, downstream, to the point at which it receives the San Francisco River.

B)-In the east:

- 1)-From the Quebrada de San Francisco, the watershed between the Zamora and Santiago Rivers, to the confluence of the Santiago River with the Yaupi;
- 2)-A line to the outlet of the Bobonaza into the Pastaza. The confluence of the Conambo River with the Pintoyacu in the Tigre River;
- 3)-Outlet of the Cononaco into the Curaray, downstream, to Bellavista;
- 4)-A line to the outlet of the Yasuní into the Napo River. Along the Napo, downstream, to the mouth of the Aguarico;
- 5)-Along the latter, upstream, to the confluence of the Lagartococha or Zancudo River with the Aguarico;
- 6)-The Lagartococha or Zancudo River, upstream, to its sources and from there a straight line meeting the Güepí River and along this river to its outlet into the Putumayo, and along the Putumayo upstream to the boundary of Ecuador and Colombia.

ARTICLE IX

It is understood that the line above described shall be accepted by Peru and Ecuador for the demarcation of the boundary between the two countries, by technical experts, on the grounds. The parties may, however, when the line is being laid out on the ground, grant such reciprocal concessions as they may consider advisable in order to adjust the aforesaid line to geographical realities. These rectifications shall be made with the collaboration of the representatives of the United States of America, the Argentine Republic, Brazil, and Chile.

The Governments of Peru and Ecuador shall submit this protocol to their respective Congresses and the corresponding approval is to be obtained within a period of not more than 30 days.

In witness thereof, the plenipotentiaries mentioned above sign and seal the present protocol, in two copies, in Spanish, in the city of Rio de Janeiro, at one o'clock, the twenty-ninth day of January, of the year nineteen hundred and forty-two, under the auspices of His Excellency the President of Brazil and in the presence of the Ministers of Foreign Affairs of the Argentine Republic, Brazil, and Chile and of the Under Secretary of State of the United States of America.

(L.S.) Alfredo Solf y Muro
(L.S.) J. Tobar Donoso

Signed) Sumner Welles
Signed) E. Ruiz Guiñazú
Signed) Juan B. Rossetti
Signed) Oswaldo Aranha

A TRUE COPY
Department of State for Foreign Affairs
Rio de Janeiro, D.F., January 30, 1942.

José Roberto de Macedo Soares
Chief of the Division of International
Acts, Congresses, and Conferences

APPENDIX II

PROTOCOL OF FRIENDSHIP AND COOPERATION
BETWEEN COLOMBIA AND PERU
(IN PART)
AND
ITS ADDITIONAL ACT

LEAGUE OF NATIONS TREATY SERIES
Vol. 164, pp. 22 ff.

TRANSLATION

No. 3786 - PROTOCOL OF FRIENDSHIP AND CO-OPERATION
BETWEEN THE REPUBLIC OF COLOMBIA AND THE REPUBLIC
OF PERU. SIGNED AT RIO DE JANEIRO, MAY 24th, 1934

Article 4.

In view of the common needs of the two States in the basins of the Amazon and the Putumayo, Peru and Colombia shall conclude special agreements on Customs, trade, free river navigation, the protection of settlers, transit, and the policing of frontiers, and shall adopt such other agreements as may be necessary to obviate any difficulties that arise or may arise in that frontier region between the two countries.

Article 6.

In order to ensure that the agreements referred to in Article 4 shall be concluded, and to stimulate their execution, there shall be created a commission of three members appointed by the Governments of Peru, Colombia, and Brazil, the chairman being the member appointed by the last-named country. The seat of the commission shall be in the territory of one or other of the High Contracting Parties, within the limits of the region to which the aforementioned agreements apply. The commission shall have power to travel from place to place within those limits, in order to co-operate more effectually with the local authorities of both States in maintaining a state of permanent peace and good neighbourliness on the common frontier. The term of office of this commission shall be four years, but may be extended if the two Governments so decide.

Sub-section I. The joint commission in question shall have no police powers, administrative functions or judicial competence in the territories subject to the jurisdiction of the High Contracting Parties, whose authority shall be exercised therein to the full.

Sub-section 2. Nevertheless, if, in the execution of the aforesaid agreements, which are integral parts of the present Protocol, conflicts should arise on account of acts or decisions involving a violation of any of those agreements, or relating to the interpretation thereof, or to the nature or extent of the reparation due for the breach of any such agreement, and should such conflicts be brought to the commission's notice by the parties concerned therein, the commission shall refer them, with its report, to the two Governments, in order that the latter may, by common consent, take the necessary action.

Sub-section 3. In default of such an understanding, and after 90 days have elapsed since the date of the communication to the two Governments, the conflict shall be settled by the commission. Either of the two Governments may appeal from this decision to the Permanent Court of International Justice at The Hague within 30 days.

Sub-section 4. The two Governments shall request the Government of Brazil to co-operate in forming the commission.

ADDITIONAL ACT

CONSTITUTING AN INTEGRAL PART OF THE PROTOCOL SIGNED ON THE SAME DATE BY THE DELEGATIONS OF PLENIPOTENTIARIES OF COLOMBIA AND PERU, AND MENTIONED IN ARTICLES 4 AND 6 OF THE SAID PROTOCOL.

I.

Article I.

There shall be complete freedom of navigation and transit between the fluvial territories of Colombia and Peru in the basins of the Amazon and Putumayo. In the exercise of this freedom, no distinction shall be made between national flags. Nor shall any distinction be made between the nationals of the two Contracting States, nor between persons proceeding from either State to the territory of the other, nor between their property or possessions. The nationals of both States shall be treated on a footing of perfect equality in either State. No distinction shall be made on the grounds of origin, destination, or route of traffic.

Article 2.

Colombian vessels in Peru and Peruvian vessels in Colombia navigating on the common rivers of those countries, their tributaries and confluents, shall be exempt from all dues of whatsoever origin or denomination.

Article 3.

The coastwise trade or trade between one port and another of the same country, even if passing through foreign waters, with or without transshipment, shall, in either State, continue to be subject to the laws of that State. The two States shall consider the possibility of reciprocally extending to specified limits on their respective fluvial coasts the advantages and restrictions relating to their own coastwise navigation.

Article 4.

Goods in transit shall not be examined by the fiscal or police authorities of either of the two countries.

Article 5.

In exercising the right, common to both States, of enacting provisions and adopting measures necessary for the general policing of the territory and for the application of the laws and regulations concerning the prevention and punishment of smuggling, health matters, precautions against diseases of animals and plants, emigration and immigration, and the importation or exportation of prohibited goods, it is understood that such provisions and measures shall not exceed the limit of what is necessary, and shall be applied on a footing of perfect equality to the nationals and goods of both countries, whether going from or to either of them, and in no case shall the freedom of navigation and transit granted by each country to the other in perpetuity under the Treaties in force be unnecessarily impeded.

Article 6.

Colombia and Peru may, when they deem it necessary, establish, by common agreement, dues in the nature of payments which shall be applied exclusively and in an equitable manner to the improvement of conditions of navigability on any one or more of their common rivers or their tributaries and confluents, and, in general, to the better service of navigation. Apart from such dues, which shall be equal for the nationals, vessels, and goods of both countries, no other charges shall be levied as between the two countries in respect of visas on consular invoices, health dues, tonnage dues, harbour dues, bills of lading, manifests, freight lists, crews' muster-rolls, passenger lists, mess-room lists, or any other due, whatever may be its denomination or the purpose for which it is levied, and vessels bound for the ports of one of the countries, whatever flag they may fly, shall not be compelled to convey officials of the other country engaged in the work of inspection or supervision, or to call at any ports.

Article 7.

Vessels owned or manned according to the laws of the country to which they belong shall be regarded as Peruvian vessels in Colombian ports and as Colombian vessels in Peruvian ports.

Both for the purposes of this Article and for those of Article 2, the following shall be understood to be included: Ships, boats, launches, rafts for conveying timber, rubber, and other articles, and in general all means of conducting trade and transit employed in the region, and the aforesaid shall enjoy the rights, advantages, and freedom that have been granted or may hereafter be granted by either country to its own nationals in respect of the conduct of their business and occupations.

Article 8.

The merchant vessels and warships of Colombia and Peru shall, moreover, enjoy all rights and franchises which either country has recognised or granted or may hereafter recognise or grant to any other State in respect of trade and fluvial navigation.

II.

Article 9.

The two States shall institute a special Customs regime to facilitate frontier traffic and to protect and develop trade in their adjacent fluvial regions. For this purpose, the Customs duties and accessory taxes or dues levied on goods of any provenance shall be identical in both countries in the said regions. The two countries shall agree to introduce a common tariff appropriate to the needs of the respective regions. Pending agreement upon such tariff, the highest tariff at present in force shall apply. The Customs regulations of both countries in the same regions shall, moreover, be uniform as regards the methods employed for collecting duties and as regards any rules, formalities and charges that may apply to Customs clearance operations.

Article 10.

A system of Customs franchises shall be established providing for the exemption from duties or taxes of products of either country imported in exchange for products received from the other country, to the same value, so that each country shall exempt products equivalent in quantity to those exported by the other.

Article 11.

In neither country shall duties, taxes or excise dues be levied on agricultural products, or products derived therefrom, coming from the frontier zones and intended for export.

Timber which is intended for preparation for export in sawmills shall be exempt from all import and export dues.

Article 12.

Persons, vessels flying any national flag, and goods in transit, which are bound for river ports of either country and have to call at the ports of the other, shall be exempt from all taxes, dues or charges, and also from all such formalities as would in any way hinder, obstruct or adversely affect their transit. No deposit shall be required.

Article 13.

The aforementioned goods in transit shall in both countries be exempt from the requirement of consular visas and all other documents or formalities, except only such as are indispensable on grounds of public health and security. Any documents necessary shall be issued without the officials concerned being entitled to collect any taxes, dues, or charges whatsoever, and without freedom of transit being adversely affected or any unjustifiable delays being caused in the voyage or any surcharge on the freights.

Article 14.

The High Contracting Parties shall without delay proceed to constitute a joint commission composed of three Colombian nationals and three Peruvian nationals, appointed by their respective Governments, to conduct work directed towards the fullest co-operation in Customs matters. This commission shall be instructed:

(1) To propose a common Customs tariff for Colombian and Peruvian river ports in the region included in the basin of the common rivers;

(2) To propose the unification of the Customs regulations to be applied by the authorities of both countries in those river ports;

(3) To devise and propose the system of franchises referred to in Article 10;

(4) To study all provisions relating to the policing of the frontiers to be applied by both countries in the above-mentioned fluvial territories, with a view to unifying the said provisions and adapting them in the best possible way to the needs of the region, so that they may afford the greatest facilities to the inhabitants thereof.

Article 15.

The joint commission referred to in the preceding Article shall further be instructed:

(1) To propose to the Governments the establishment of an equitable system applying equally to both countries in respect of municipal dues levied on foodstuffs coming from farms in the neighborhood and on firewood, timber and palm leaves. Pending the establishment of such system, no such dues shall be levied in either country;

(2) To propose regulations for a system of free trade, with exemption from all dues or taxes, in foodstuffs, medicaments, cotton fabrics and tools imported from abroad into the adjacent regions of the Putumayo. Pending the enactment of regulations for such a system, no dues or taxes shall be levied on the importation of such articles;

(3) To devise a system of co-operation for the purpose of preventing smuggling on their frontiers and facilitating the punishment thereof.

III.

Article 16.

Both States shall endeavour to ensure that in the respective adjacent fluvial regions careful supervision is exercised with a view to the effective security of the enjoyment and exercise of civil rights and of the individual guarantees recognised by their laws in respect

of settlers scattered in the forests and the inhabitants of towns and centres of population in their river basins. Both States consider the above-mentioned measures to be an essential condition of international juridical life.

Article 17.

Both States shall, in their fluvial territories, apply those principles of law which uphold the human dignity, the labour, and the freedom and well-being of their inhabitants, whether civilised or forest-dwelling. Accordingly, they recognise:

(a) That labour is not to be regarded as a commodity;

(b) That workers must be paid such wages as will secure them a suitable standard of life appropriate to their circumstances as regards both time and place;

(c) That the rules laid down in either country in regard to conditions of labour must guarantee an equitable economic reward and have regard to the safety and health of the worker, the labour he performs, the climate, age, sex, nutrition, cultural requirements, and the necessary daily and weekly rest, the latter being of at least twenty-four hours' duration;

(d) That wages must be equal without distinction of sex;

(e) That workers in forest regions must be specially protected from dangers and diseases.

Article 18.

In regard to forest-dwellers who are not adapted, or not fully adapted, to civilisation, both States recognise that it is their fundamental duty to concern themselves actively, and more particularly in their respective adjacent zones, with the position of the native tribes, in order to defend, educate, and assist them, and to improve their present condition:

(a) The development of public education shall be promoted by establishing schools in which instruction is given through the medium of the native languages.

(b) All forced or compulsory labour shall be prohibited.

(c) The transfer of property shall not involve any obligation to emigrate.

(d) Freedom of movement shall be guaranteed for the purposes of entering, leaving, passing through or returning to the country on one or more occasions without any formalities other than those that have been established by custom and by the general laws. Such formalities shall not apply to natives.

(e) The principles adopted by the League of Nations shall be applied in regard to alcoholic liquor, arms, and munitions, and for the purpose of preventing and combating diseases of plants and animals.

(f) Steps shall be taken to prepare the natives, in their settlements, more particularly for civilised life in the regions from which they come, and in which the duty of attracting and preparing their fellows should be performed.

(g) The High Contracting Parties shall, at their own expense, maintain in specified places dispensaries adequately supplied with the drugs and apparatus necessary for the methodical, continuous or occasional treatment of natives suffering from diseases common in the region, or in epidemic periods. This service shall be technically organised for the purpose.

(h) The High Contracting Parties shall take the necessary measures to ensure that, both in private undertakings and also in special posts and foundations and in the native settlements, such plants as are adapted to the environment and prevent the development of certain diseases common in the regions, and due to malnutrition, shall be sown, and that the natives shall be taught to cultivate them.

(i) The High Contracting Parties shall determine the method by which the wages earned by the natives may be spent on tools, clothing, household goods, etc., but in no case on intoxicating liquor. They shall take steps to protect the natives from those who would exploit their ignorance and innocence.

(j) The same joint commission which is entrusted with the execution of the agreements shall organise an inspection service to ensure the faithful observance of the above-mentioned principles, for the application of which the loyalty and humanity of the two States shall be relied upon.

In faith whereof the Plenipotentiaries above named have signed the present Additional Act in duplicate and have thereto affixed their seals, in the city of Rio de Janeiro, on the twenty-four day of May, one thousand nine hundred and thirty-four.

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|--------|----------------------|
| (L.S.) | R. Urdaneta Arbeláez |
| (L.S.) | Guillermo Valencia |
| (L.S.) | Luis Cano |
| (L.S.) | Victor M. Maúrtua |
| (L.S.) | V. A. Belaunde |
| (L.S.) | Alberto Ulloa |

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